

## 37 Am. Jur. 2d Fraud and Deceit § 101

American Jurisprudence, Second Edition | May 2021 Update

### Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

### IV. False Representations

#### D. Matters of Law

##### 1. In General

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### West's Key Number Digest

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### A.L.R. Library

[Misrepresentation by one other than insurance agent as to coverage, exclusion, or legal effect of insurance policy, as actionable, 29 A.L.R.2d 213](#)

[Avoidance of release of claim for personal injuries on ground of misrepresentation as to matters of law by tortfeasor or his representative insurer, 21 A.L.R.2d 272](#)

### Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 218](#) (Instruction to jury—Reliance on representations of law not justified)

Representations or statements concerning domestic law are not ordinarily regarded as representations of fact but rather expressions of opinion on which no action in fraud will lie even though they are false.<sup>1</sup> It is accordingly well settled, as a general rule, that fraud cannot be predicated upon misrepresentations of law or misrepresentations as to matters of law.<sup>2</sup> In other words,

claims of fraud generally cannot arise from legal opinions;<sup>3</sup> a representation of law is a statement of opinion as to what the law permits or prohibits and cannot support an action for fraud.<sup>4</sup> The rule embraces opinions on questions of law based on facts known to both parties alike<sup>5</sup> and extends to representations as to what the law requires to be done<sup>6</sup> and representations as to what the law will not permit to be done,<sup>7</sup> especially when the representations are made by the avowed agent of the adverse interest,<sup>8</sup> or when there is no confidential relationship between the parties.<sup>9</sup> There are, however, exceptions to the general rule.<sup>10</sup>

The American Law Institute takes the position that if an assertion is one as to a matter of law, the same rules that apply in the case of other assertions determine whether the recipient is justified in relying on it.<sup>11</sup>

One who does not withhold or misstate the facts cannot be adjudged guilty of fraud simply because the courts finally decide the law to be other than it was claimed it to be while litigation continued over the subject in question;<sup>12</sup> thus, a subsequent legal decision adverse to a statement or representation previously expressed as to the law cannot establish prior fraud.<sup>13</sup> In addition, generally speaking, a charge of fraud cannot be based on an honest mistake in a statement of general law.<sup>14</sup>

**Observation:**

The reasons generally advanced as the basis of the rule that fraud cannot be predicated upon misrepresentations as to matters of law are that everyone is presumed to know the law, both civil and criminal,<sup>15</sup> and is bound to take notice of it<sup>16</sup> and therefore cannot, in legal contemplation, be deceived by such misrepresentations.<sup>17</sup> The rule is sometimes based on the theory that fraud cannot be predicated upon an expression of opinion.<sup>18</sup> Hence, one has no right to rely on such representations or opinions and will not be permitted to assert being misled by them.<sup>19</sup> In spite of this general rationale, however, there is authority that a false opinion of the law, if represented as a sincere opinion, may, as any other opinion, give rise to a fraud claim if it is reasonably relied upon by the other party.<sup>20</sup>

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**Footnotes**

- 1 [Bernhan Chemical & Metal Corporation v. Ship-A-Hoy](#), 200 A.D. 399, 193 N.Y.S. 372 (1st Dep't 1922), aff'd in part, rev'd in part on other grounds, 234 N.Y. 563, 138 N.E. 447 (1922).
- 2 [Mutual Life Ins. Co. of New York v. Phinney](#), 178 U.S. 327, 20 S. Ct. 906, 44 L. Ed. 1088 (1900).
- 3 [BP America Production Co. v. Marshall](#), 288 S.W.3d 430 (Tex. App. San Antonio 2008), review granted, (Oct. 1, 2010) and judgment rev'd on other grounds, 342 S.W.3d 59 (Tex. 2011).
- 4 [Brodeur v. American Home Assur. Co.](#), 169 P.3d 139 (Colo. 2007).
- 5 [Mutual Life Ins. Co. of New York v. Phinney](#), 178 U.S. 327, 20 S. Ct. 906, 44 L. Ed. 1088 (1900); [Rice v. Ragsdale](#), 104 Ark. App. 364, 292 S.W.3d 856 (2009).
- 6 [McDonald v. Goodman](#), 239 S.W.2d 97 (Ky. 1951); [Cummins v. Robinson Twp.](#), 283 Mich. App. 677, 770 N.W.2d 421 (2009).
- 7 [Pambianchi v. Howell](#), 100 Ark. App. 154, 265 S.W.3d 788 (2007); [State v. Edwards](#), 178 Minn. 446, 227 N.W. 495, 65 A.L.R. 1253 (1929); [In re Plain State Bank](#), 217 Wis. 257, 258 N.W. 783 (1935).

- 8 Pambianchi v. Howell, 100 Ark. App. 154, 265 S.W.3d 788 (2007); Powers v. Kansas City Public Service Co., 334 Mo. 432, 66 S.W.2d 840 (1933); Traders & General Ins. Co. v. Keith, 107 S.W.2d 710 (Tex. Civ. App. Amarillo 1937), writ dismissed.  
Opinions regarding the status or interpretation of the law generally will not provide a basis for an action for fraud or misrepresentation particularly where the statements are made by a nonlawyer who is also an adverse party in a pending action. DePalantino v. DePalantino, 139 N.H. 522, 658 A.2d 1207 (1995).
- 9 Dixon v. Dixon, 211 Ga. 557, 87 S.E.2d 369 (1955); Lynch v. Dial Finance Co. of Ohio No. 1, Inc., 101 Ohio App. 3d 742, 656 N.E.2d 714 (8th Dist. Cuyahoga County 1995).
- 10 §§ 103 to 105.
- 11 Restatement Second, Contracts § 170.
- 12 Alexander v. Randall, 257 Iowa 422, 133 N.W.2d 124 (1965); Cucchiaro v. Cucchiaro, 165 Misc. 2d 134, 627 N.Y.S.2d 224 (Sup 1995).
- 13 Alexander v. Randall, 257 Iowa 422, 133 N.W.2d 124 (1965).
- 14 Glass v. Southern Wrecker Sales, 990 F. Supp. 1344 (M.D. Ala. 1998), *aff'd*, 163 F.3d 1361 (11th Cir. 1998) (applying Alabama law); Alexander v. Randall, 257 Iowa 422, 133 N.W.2d 124 (1965).
- 15 Pambianchi v. Howell, 100 Ark. App. 154, 265 S.W.3d 788 (2007); Meyer v. Santema, 1997 SD 21, 559 N.W.2d 251 (S.D. 1997); Safety Casualty Co. v. McGee, 133 Tex. 233, 127 S.W.2d 176, 121 A.L.R. 1263 (Comm'n App. 1939).
- 16 Pambianchi v. Howell, 100 Ark. App. 154, 265 S.W.3d 788 (2007); McDonald v. Goodman, 239 S.W.2d 97 (Ky. 1951); Krushew v. Meitz, 276 Mich. 553, 268 N.W. 736 (1936).
- 17 Dixon v. Dixon, 211 Ga. 557, 87 S.E.2d 369 (1955).
- 18 Agnew v. Landers, 59 N.M. 54, 278 P.2d 970 (1954).
- 19 Pambianchi v. Howell, 100 Ark. App. 154, 265 S.W.3d 788 (2007); McDonald v. Goodman, 239 S.W.2d 97 (Ky. 1951); Safety Casualty Co. v. McGee, 133 Tex. 233, 127 S.W.2d 176, 121 A.L.R. 1263 (Comm'n App. 1939).
- 20 AIU Ins. Co. v. Deajess Medical Imaging, P.C., 24 Misc. 3d 161, 882 N.Y.S.2d 812 (Sup 2009).

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## 37 Am. Jur. 2d Fraud and Deceit § 102

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### Fraud and Deceit

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### IV. False Representations

#### D. Matters of Law

##### 1. In General

## § 102. Application of rule of nonliability

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  10

### A.L.R. Library

[Misrepresentation by one other than insurance agent as to coverage, exclusion, or legal effect of insurance policy, as actionable, 29 A.L.R.2d 213](#)

The rule that fraud cannot be based upon misrepresentations as to matters of law or expressions of opinion as to what is the law governing a particular transaction has been applied in many different situations. Pursuant to this principle it has been held that, as a rule, fraud cannot be predicated on misrepresentations as to the legal effect of a written instrument<sup>1</sup> as, for example, a deed,<sup>2</sup> a note and mortgage,<sup>3</sup> a federal land warrant,<sup>4</sup> or a contract of insurance.<sup>5</sup>

The principle of nonresponsibility for misrepresentations of law has been applied to a statement by a doctor to a widow that it was legally compulsory for her to have an autopsy performed on the body of her husband;<sup>6</sup> to representations as to matters of law related to the presence of mold in a home;<sup>7</sup> to an opinion as to when an option given to a third person for the purchase of land will expire;<sup>8</sup> to representations as to the responsibility of a father and mother for the debts of their son;<sup>9</sup> and to expressions of opinion by the vendor or vendee of realty as to the liens that certain property is subject to, or as to its freedom from liens,<sup>10</sup> or a false representation by a vendor of land as to a matter of law relating to rights in and to the land.<sup>11</sup>

In the absence of circumstances evoking exceptions to the general rule,<sup>12</sup> it appears that misrepresentations as to tax law are within the rule that fraud cannot be predicated upon misrepresentations as to law.<sup>13</sup>

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Footnotes

- 1 Mutual Life Ins. Co. of New York v. Phinney, 178 U.S. 327, 20 S. Ct. 906, 44 L. Ed. 1088 (1900).
- 2 Adkins v. Hoskins, 176 Ark. 565, 3 S.W.2d 322 (1928).
- 3 Wochnick v. True, 224 Or. 470, 356 P.2d 515 (1960) (representation that chattel mortgage was valid).
- 4 Adkins v. Hoskins, 176 Ark. 565, 3 S.W.2d 322 (1928).
- 5 Adkins v. Hoskins, 176 Ark. 565, 3 S.W.2d 322 (1928).
- 6 McDonald v. Goodman, 239 S.W.2d 97 (Ky. 1951).
- 7 Allstate Ins. Co. v. Sutton, 290 Ga. App. 154, 658 S.E.2d 909 (2008).
- 8 Rheingans v. Smith, 161 Cal. 362, 119 P. 494 (1911).
- 9 Yappel v. Mozina, 33 Ohio App. 371, 169 N.E. 315 (8th Dist. Cuyahoga County 1929).
- 10 Bonded Adjustment Co. v. Anderson, 186 Wash. 226, 57 P.2d 1046, 106 A.L.R. 166 (1936).
- 11 Rheingans v. Smith, 161 Cal. 362, 119 P. 494 (1911); Epp v. Hinton, 91 Kan. 513, 138 P. 576 (1914), opinion modified on other grounds on denial of reh'g, Epp v. Hinton, 91 Kan. 919, 139 P. 379 (1914).
- 12 §§ 103 to 105.
- 13 Salter v. Brown, 56 Ga. App. 792, 193 S.E. 903 (1937); Blaisdell v. Derees, 101 N.J. Eq. 723, 139 A. 178 (Ct. Err. & App. 1927); Parker v. Raleigh Sav. Bank, 152 N.C. 253, 67 S.E. 492 (1910).

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## 37 Am. Jur. 2d Fraud and Deceit § 103

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### IV. False Representations

#### D. Matters of Law

#### 2. Exceptions to Rule of Nonliability

## § 103. Inequitable conduct by representor; special relationship between parties

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

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### A.L.R. Library

[False representations as to income, profits, or productivity of property as fraud, 27 A.L.R.2d 14](#)

[Avoidance of release of claim for personal injuries on ground of misrepresentation as to matters of law by tortfeasor or his representative insurer, 21 A.L.R.2d 272](#)

A representation of domestic law may constitute fraud where it is accompanied by some inequitable conduct on the part of the person making it which induces the other party to rely and act thereon.<sup>1</sup> Much depends upon whether the parties deal on equal terms.<sup>2</sup> Thus, relief may be granted because of such a misrepresentation where there is a relation of trust and confidence between the parties<sup>3</sup> or where the speaker has, or professes to have, superior knowledge of the law.<sup>4</sup> Hence, the misrepresentation is actionable where one who personally knows the law deceives another by misrepresenting the law<sup>5</sup> or, knowing such other to be ignorant of it, takes advantage through such ignorance;<sup>6</sup> or where the person to whom the representations are made relies upon the supposed superior knowledge and experience of the other party and on the statement that it is unnecessary or inadvisable to consult a lawyer;<sup>7</sup> or where the representor is a long-time resident of the state and is presumed to know its laws and knows that the representee is new in the state.<sup>8</sup> As one court has summarized it, the "relationship exception" to the general rule that statements of a legal opinion are not actionable in fraud applies if: (1) the parties are in a fiduciary relationship; (2) the party making the statement is a lawyer and the circumstances require him or her to divulge all the information which he or she

possessed to the plaintiff; or (3) the party making the statement is a lawyer and knew that the plaintiff was relying upon him or her as one learned in the law.<sup>9</sup> As formulated by another court, the rule is that statements which might ordinarily be classified as nonactionable legal opinions are actionable as a fraud claim where: (1) a party with superior knowledge takes advantage of another's ignorance of the law to deceive him or her by studied concealment or misrepresentation, (2) there is a fiduciary relationship between the parties, and (3) misrepresentations involving a point of law are intended to be misrepresentations of fact and are understood as such.<sup>10</sup> It has also been said that a false opinion of the law, if represented as a sincere opinion, may, as any other opinion, give rise to a fraud claim if it is reasonably relied upon by the other party.<sup>11</sup>

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## Footnotes

- 1 [Cucchiario v. Cucchiario](#), 165 Misc. 2d 134, 627 N.Y.S.2d 224 (Sup 1995); [Safety Casualty Co. v. McGee](#), 133 Tex. 233, 127 S.W.2d 176, 121 A.L.R. 1263 (Comm'n App. 1939); [Rice v. Press](#), 117 Vt. 442, 94 A.2d 397 (1953).
- 2 [State v. Edwards](#), 178 Minn. 446, 227 N.W. 495, 65 A.L.R. 1253 (1929); [Hartley Realty Co. v. Casady](#), 332 S.W.2d 291 (Mo. Ct. App. 1960); [Rice v. Press](#), 117 Vt. 442, 94 A.2d 397 (1953).
- 3 [Bowman v. City of Indianapolis](#), 133 F.3d 513 (7th Cir. 1998) (applying Indiana Law); [Loringer v. Kaplan](#), 179 Neb. 215, 137 N.W.2d 716 (1965); [In re Levy's Estate](#), 19 A.D.2d 413, 244 N.Y.S.2d 22 (1st Dep't 1963).
- 4 [Bowman v. City of Indianapolis](#), 133 F.3d 513 (7th Cir. 1998) (applying Indiana law); [Sawyer v. Pierce](#), 580 S.W.2d 117 (Tex. Civ. App. Corpus Christi 1979), writ refused n.r.e., (July 18, 1979); [Rice v. Press](#), 117 Vt. 442, 94 A.2d 397 (1953).  
A misrepresentation of the law may be actionable as fraud where it is made by an attorney who thereby induces reliance. [Bowman v. City of Indianapolis](#), 133 F.3d 513 (7th Cir. 1998) (applying Indiana law).
- 5 [Moody v. Stem](#), 214 S.C. 45, 51 S.E.2d 163 (1948); [Safety Casualty Co. v. McGee](#), 133 Tex. 233, 127 S.W.2d 176, 121 A.L.R. 1263 (Comm'n App. 1939); [Madison Trust Co. v. Helleckson](#), 216 Wis. 443, 257 N.W. 691, 96 A.L.R. 992 (1934).
- 6 [Penn Mut. Life Ins. Co. v. Nunnery](#), 176 Miss. 197, 167 So. 416 (1936); [Hartley Realty Co. v. Casady](#), 332 S.W.2d 291 (Mo. Ct. App. 1960); [Moody v. Stem](#), 214 S.C. 45, 51 S.E.2d 163 (1948).
- 7 [Fawcett v. Sun Life Assur. Co. of Canada](#), 135 F.2d 544, 153 A.L.R. 533 (C.C.A. 10th Cir. 1943); [Emerson-Brantingham Implement Co. v. Anderson](#), 58 Mont. 617, 194 P. 160 (1920); [Safety Casualty Co. v. McGee](#), 133 Tex. 233, 127 S.W.2d 176, 121 A.L.R. 1263 (Comm'n App. 1939).
- 8 [Graves v. Cupic](#), 75 Idaho 451, 272 P.2d 1020 (1954) (overruled on other grounds by, [Benz v. D.L. Evans Bank](#), 152 Idaho 215, 268 P.3d 1167 (2012)) (license requirements of business being sold).
- 9 [Brodeur v. American Home Assur. Co.](#), 169 P.3d 139 (Colo. 2007).
- 10 [BP America Production Co. v. Marshall](#), 288 S.W.3d 430 (Tex. App. San Antonio 2008), review granted, (Oct. 1, 2010) and judgment rev'd on other grounds, 342 S.W.3d 59 (Tex. 2011).
- 11 [AIU Ins. Co. v. Deajess Medical Imaging, P.C.](#), 24 Misc. 3d 161, 882 N.Y.S.2d 812 (Sup 2009).

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### IV. False Representations

#### D. Matters of Law

#### 2. Exceptions to Rule of Nonliability

## § 104. Mixed law and fact; factual statement regarding legal matters

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  10

A representation of mixed law and fact may constitute the basis for an action in fraud<sup>1</sup> if it amounts to an implied assertion that facts exist that justify the conclusion of law which is expressed and the other party would ordinarily have no knowledge of the facts.<sup>2</sup> Moreover, while misstatements of law alone will not generally constitute fraud, they may, when such misstatements are accompanied by concealment or misrepresentation of facts, be made the basis of a charge of fraud.<sup>3</sup>

### Observation:

A statement referring to the occurrence of a specific legal event is factual, for the purpose of a fraudulent misrepresentation claim, only if the event has already occurred or is presently occurring and if it goes beyond opinion, conjecture, speculation, and prediction.<sup>4</sup>



Footnotes

- 1 [Cucchiaro v. Cucchiaro](#), 165 Misc. 2d 134, 627 N.Y.S.2d 224 (Sup 1995) (false mixed statement of fact as to what the law is or whether it is applicable); [Goerig v. Elliott](#), 27 Wash. 2d 600, 179 P.2d 320 (1947). Since a misrepresentation as to the law may give rise to an action for fraud, so may a misrepresentation as to a mixed question of fact and law, such as eligibility for reimbursement under the no-fault insurance laws. [AIU Ins. Co. v. Deajess Medical Imaging, P.C.](#), 24 Misc. 3d 161, 882 N.Y.S.2d 812 (Sup 2009).
- 2 [Hoyt Properties, Inc. v. Production Resource Group, L.L.C.](#), 736 N.W.2d 313 (Minn. 2007). Where the facts upon which a statement of law is based are misrepresented, there may be actionable fraud. [Sorensen v. Gardner](#), 215 Or. 255, 334 P.2d 471 (1959).
- 3 [Sorensen v. Gardner](#), 215 Or. 255, 334 P.2d 471 (1959); [Goerig v. Elliott](#), 27 Wash. 2d 600, 179 P.2d 320 (1947).
- 4 [In re Midway Airlines, Inc.](#), 180 B.R. 851 (Bankr. N.D. Ill. 1995) (applying Illinois law).

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## 37 Am. Jur. 2d Fraud and Deceit § 105

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### IV. False Representations

#### D. Matters of Law

#### 2. Exceptions to Rule of Nonliability

## § 105. Foreign law; law of another state

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#) 10

### A.L.R. Library

[Misrepresentation as to matters of foreign law as actionable, 24 A.L.R.2d 1039](#)

As a general rule, representations as to the law of a foreign state are regarded as representations of fact. A misrepresentation as to that law is therefore a fraud.<sup>1</sup> This rule has been applied, for instance, to misrepresentations of the foreign law of insurance,<sup>2</sup> of foreign automobile registration law,<sup>3</sup> and of foreign irrigation law.<sup>4</sup> Nevertheless, in some jurisdictions, the actionability of the representations may be regarded as limited to those made in bad faith.<sup>5</sup>

### Reminder:

Even where a legal opinion is regarded as such, it may still be actionable where it misrepresents the facts on which it is based or implies the existence of facts which are nonexistent.<sup>6</sup>

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Footnotes

- 1 Bowman v. City of Indianapolis, 133 F.3d 513 (7th Cir. 1998) (applying Indiana law); Hembry v. Parreco, 81 A.2d 77, 24 A.L.R.2d 1034 (Mun. Ct. App. D.C. 1951); Travelers' Protective Ass'n of America v. Smith, 183 Ind. 59, 107 N.E. 283 (1914); State v. Edwards, 178 Minn. 446, 227 N.W. 495, 65 A.L.R. 1253 (1929); Arroyo Shrimp Farm, Inc. v. Hung Shrimp Farm, Inc., 927 S.W.2d 146 (Tex. App. Corpus Christi 1996).
- 2 Rauen v. Prudential Ins. Co. of America, 129 Iowa 725, 106 N.W. 198 (1906).
- 3 Hembry v. Parreco, 81 A.2d 77, 24 A.L.R.2d 1034 (Mun. Ct. App. D.C. 1951).
- 4 Epp v. Hinton, 91 Kan. 513, 138 P. 576 (1914), opinion modified on other grounds on denial of reh'g, Epp v. Hinton, 91 Kan. 919, 139 P. 379 (1914).
- 5 Miller v. McGinnis, 285 Mich. 28, 280 N.W. 96 (1938).
- 6 § 104.

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## 37 Am. Jur. 2d Fraud and Deceit IV G Refs.

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### Fraud and Deceit

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### IV. False Representations

### G. Representations and Statements as to Particular Matters

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## Research References

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

### A.L.R. Library

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## 37 Am. Jur. 2d Fraud and Deceit § 137

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### Fraud and Deceit

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### IV. False Representations

### G. Representations and Statements as to Particular Matters

### 1. In General

## § 137. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#) , 27, 28

### A.L.R. Library

[Remedies for fraud or misrepresentation as to heating or cooling cost of realty purchased](#), 32 A.L.R.4th 828

### Trial Strategy

[Misrepresentation in Automobile Sales](#), 13 Am. Jur. Trials 253

### Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit §§ 7 to 64](#) (Complaint, petition, or declaration—Fraud—Miscellaneous factual circumstances and transactions)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit §§ 92 to 122](#) (Complaint, petition, or declaration—Fraud in sale of personal property)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit §§ 123 to 131](#) (Complaint—Fraud in securing sales of goods on credit)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit §§ 132 to 146](#) (Complaints, petitions, or declarations—Fraud in security transactions)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit §§ 149 to 156](#) (Complaint, petition, or declaration—Fraud in sale of real property)

As a general rule, subject to certain exceptions, fraud must relate to a present or preexisting fact and cannot be predicated on representations or statements that involve mere matters of futurity or things to be done or performed in the future.<sup>1</sup> Thus, mere promissory statements or unkept promises cannot be made the basis of fraud.<sup>2</sup> Subject to those limitations, the scope of matters as to which fraudulent misrepresentations may be made is vast. For instance, fraud has been predicated upon—

- representations to investors by the manager of a business regarding his employment history, investment track record, and his personal financial situation.<sup>3</sup>
- representations by the president of a successful bidder, to the effect that the bidder was a small business, made in order to obtain a procurement contract.<sup>4</sup>
- representations by an oil and gas lessee regarding its right to cross surface estate owners' property to reach certain wells.<sup>5</sup>
- a representation that a person has an oral agreement with another which would be unenforceable under the statute of frauds.<sup>6</sup>
- representations to a subcontractor by the owner that the owner has procured and holds a bond guaranteeing the payment by the general contractor of all obligations to the subcontractors.<sup>7</sup>
- a representation as to the annual cost of fuel oil to heat a building.<sup>8</sup>
- allegations by a minority shareholder of the corporation regarding the status of a majority shareholder.<sup>9</sup>
- the use by companies, which are without authority to do business in a state, of names which include the state's name.<sup>10</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Laptop consumer failed to allege that there were representations made to him by laptop manufacturer regarding laptop's battery life that would support a claim for a duty to disclose based on partial representation in consumer's action against manufacturer under the California Consumers Legal Remedies Act (CLRA) for fraudulent omission. [West's Ann.Cal.Civ.Code § 1770\(a\)\(5, 7, 9\)](#). [Herron v. Best Buy Co. Inc.](#), 924 F. Supp. 2d 1161 (E.D. Cal. 2013).

### [END OF SUPPLEMENT]

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Footnotes

- 1 §§ 84, 85, 86.
- 2 §§ 87 to 89.
- 3 [Paron Capital Management, LLC v. Crombie](#), 2012 WL 2045857 (Del. Ch. 2012).
- 4 [Systems Engineering and Sec., Inc. v. Science & Engineering Associations, Inc.](#), 962 So. 2d 1089 (La. Ct. App. 4th Cir. 2007).
- 5 [Kysar v. BP America Production Co.](#), 2012-NMCA-036, 273 P.3d 867 (N.M. Ct. App. 2012).
- 6 [Slonemsky v. Zevin](#), 239 A.D. 404, 267 N.Y.S. 589 (1st Dep't 1933).
- 7 [Champion Const. & Engineering Co. v. Bush Terminal Bldgs. Co.](#), 275 A.D. 1055, 92 N.Y.S.2d 242 (2d Dep't 1949).
- 8 [Zeliff v. Sabatino](#), 27 N.J. Super. 13, 98 A.2d 679 (App. Div. 1953), judgment rev'd on other grounds, 15 N.J. 70, 104 A.2d 54 (1954).
- 9 [Tyler v. O'Neill](#), 994 F. Supp. 603 (E.D. Pa. 1998), [aff'd](#), 189 F.3d 465 (3d Cir. 1999) (applying Pennsylvania law).
- 10 [State v. Saksniit](#), 69 Misc. 2d 554, 332 N.Y.S.2d 343 (Sup 1972).

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## 37 Am. Jur. 2d Fraud and Deceit § 138

American Jurisprudence, Second Edition | May 2021 Update

### Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

### IV. False Representations

### G. Representations and Statements as to Particular Matters

### 1. In General

## § 138. Health, physical condition, or medical treatment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

### A.L.R. Library

[Medical malpractice: liability based on misrepresentation of the nature and hazards of treatment, 42 A.L.R.4th 543](#)

[Modern status of rules as to avoidance of release of personal injury claim on ground of mistake as to nature and extent of injuries, 13 A.L.R.4th 686](#)

### Trial Strategy

[Unnecessary Surgery—Hysterectomy, 40 Am. Jur. Proof of Facts 3d 1](#)

False statements as to one's own health may be the basis of an action in fraud, and a representation that one is in good health when at the time a person knows he or she is suffering from a medical disorder will support an action in fraud.<sup>1</sup>

A cause of action is recognized for the intentional or negligent communication of a venereal disease under either a general prima facie tort theory or fraud, deceit, and misrepresentation.<sup>2</sup> One court has stated that a person who knows that he or she has



acquired immune deficiency syndrome (AIDS) and misrepresents or conceals this knowledge from a sexual partner who then contracts AIDS as a result of unprotected sex should be liable for injuries sustained by his or her partner.<sup>3</sup>

Representations by third parties other than a physician about one person's health to another person may, under appropriate circumstances, form the basis of an action for fraud, but not if the person to whom the representation is made is unjustified in relying on those representations.<sup>4</sup>

The rules relating to false representations by physicians<sup>5</sup> apply as well to statements by an employer's claim agent for the purpose of procuring a release<sup>6</sup> and to false statements as to the nature of the injury whereby a settlement is procured, made by the agent of the person responsible for the injury.<sup>7</sup>

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#### Footnotes

- 1 [Cohen v. Kahn](#), 263 A.D. 728, 30 N.Y.S.2d 875 (2d Dep't 1941).
- 2 [Doe v. Roe](#), 157 Misc. 2d 690, 598 N.Y.S.2d 678 (J. Ct. 1993).
- 3 [J.B. v. Bohonovsky](#), 835 F. Supp. 796, 28 Fed. R. Serv. 3d 468 (D.N.J. 1993).
- 4 [Doe v. Dilling](#), 228 Ill. 2d 324, 320 Ill. Dec. 807, 888 N.E.2d 24 (2008) (plaintiff's claim that the parents of plaintiff's fiance had misrepresented to her that the fiance suffered from heavy-metal poisoning and Lyme disease, when the fiance had allegedly been diagnosed with AIDS, and that plaintiff reasonably relied on those representations in delaying HIV testing).
- 5 [§ 139](#).
- 6 [Scheer v. Rockne Motors Corporation](#), 68 F.2d 942 (C.C.A. 2d Cir. 1934); [Graham v. Atchison, T. & S.F. Ry. Co.](#), 176 F.2d 819 (9th Cir. 1949); [Duncan v. Texas Employers' Ins. Ass'n](#), 105 S.W.2d 403 (Tex. Civ. App. San Antonio 1937), writ dismissed.  
As to false representations by physicians, generally, see [§ 139](#).
- 7 [Scheer v. Rockne Motors Corporation](#), 68 F.2d 942 (C.C.A. 2d Cir. 1934).

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## 37 Am. Jur. 2d Fraud and Deceit § 139

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### Fraud and Deceit

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### IV. False Representations

#### G. Representations and Statements as to Particular Matters

##### 1. In General

## § 139. Health, physical condition, or medical treatment—Statements by physicians and hospitals

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

### A.L.R. Library

[Liability of Hospice in Tort, in Contract, or Pursuant to Statute, for Maltreatment or Mistreatment of Patient, 95 A.L.R.6th 479](#)

[Liability of Hospice in Tort, in Contract, or Pursuant to Statute, for Maltreatment or Mistreatment of Patient, 95 A.L.R.6th 479](#)

[Medical malpractice: liability based on misrepresentation of the nature and hazards of treatment, 42 A.L.R.4th 543](#)

[Modern status of rules as to avoidance of release of personal injury claim on ground of mistake as to nature and extent of injuries, 13 A.L.R.4th 686](#)

### Trial Strategy

[Unnecessary Surgery—Hysterectomy, 40 Am. Jur. Proof of Facts 3d 1](#)

Whether fraud may be based on statements by a physician to an injured person as to the duration of the injured person's injuries generally depends on whether such statements are intended or understood to be mere expressions of opinion upon which the

person to whom they are made has no right to rely, or whether it was intended that they should be received, and whether they were received, as statements of fact.<sup>1</sup> A physician has a duty not to defraud a patient by intentionally misrepresenting the number of required treatments although this duty does not arise by virtue of the physician's specialized expertise or status as professional.<sup>2</sup> However, a physician's representations as to the expected result of an operation does not support a claim of fraud, absent evidence that the physician did not intend to accomplish the exact result the physician stated.<sup>3</sup>

An action for fraud may be stated where a physician misrepresents the results of surgery performed by the physician.<sup>4</sup> Where a patient has a cause of action against a physician for negligence or malpractice and is deceived by intentional and knowing lies and fraud of the physician to the extent that the patient, in reliance on the fraudulent concealment by the physician, does not bring an action for malpractice within the period of the applicable statute of limitations, the patient may maintain an action for fraud against the physician, not on account of the original negligence or malpractice, but on account of the fraud of the physician that deceived the patient with the consequence that the time bar ran against the original action.<sup>5</sup> It has been held in this regard that in order to have a separate cause of action for fraud based upon a physician's concealment of the physician's own malpractice, the medical malpractice plaintiff must show that the personal injuries caused by the fraud were different from those caused by the malpractice.<sup>6</sup>

Where a physician knowingly and intentionally represents that the physician can administer safely a substance that in fact can be administered only under restrictions and controls of a state or federal authority, and the physician administers that substance without a requisite permit and without informing the patient of the restrictions and dangers, the patient can maintain an action for fraud, as well as malpractice.<sup>7</sup> Similarly, an individual treated by a person engaged in the unlicensed practice of dentistry may base a cause of action for fraud on such person's material false representations or concealment of a material existing fact.<sup>8</sup> However, there can be no action for fraud against a hospital or physicians in the absence of a material misrepresentation of fact.<sup>9</sup>

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#### Footnotes

- 1 [Tulsa City Lines v. Mains](#), 107 F.2d 377 (C.C.A. 10th Cir. 1939); [Conklin v. Missouri Pac. R. Co.](#), 331 Mo. 734, 55 S.W.2d 306 (1932).
- 2 [Boggs v. Bosley Medical Institute, Inc.](#), 228 Ga. App. 598, 492 S.E.2d 264 (1997).
- 3 [Stone v. Foster](#), 106 Cal. App. 3d 334, 164 Cal. Rptr. 901 (3d Dist. 1980).
- 4 [Nutt v. Carson](#), 1959 OK 76, 340 P.2d 260 (Okla. 1959).
- 5 [Robinson v. Shah](#), 23 Kan. App. 2d 812, 936 P.2d 784 (1997).
- 6 [Harkin v. Culleton](#), 156 A.D.2d 19, 554 N.Y.S.2d 478 (1st Dep't 1990).
- 7 [Nelson v. Gaunt](#), 125 Cal. App. 3d 623, 178 Cal. Rptr. 167 (1st Dist. 1981).
- 8 [Adames v. Velasquez](#), 19 Misc. 3d 881, 855 N.Y.S.2d 343 (Sup 2008).
- 9 [Parham v. Florida Health Sciences Center, Inc.](#), 35 So. 3d 920 (Fla. 2d DCA 2010), review dismissed, 38 So. 3d 771 (Fla. 2010).

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## 37 Am. Jur. 2d Fraud and Deceit § 140

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### Fraud and Deceit

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### IV. False Representations

#### G. Representations and Statements as to Particular Matters

##### 1. In General

## § 140. Marriage, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#) , 27, 28

### A.L.R. Library

["Wrongful adoption" causes of action against adoption agencies where children have or develop mental or physical problems that are misrepresented or not disclosed to adoptive parents, 74 A.L.R.5th 1](#)

[Sexual partner's tort liability to other partner for fraudulent misrepresentation regarding sterility or use of birth control resulting in pregnancy, 2 A.L.R.5th 301](#)

A promise to marry made by one who knows that a lawful marriage is not possible because a prior marriage remains undissolved is a fraudulent promise.<sup>1</sup> One putative spouse can maintain a cause of action for fraud against the other for allegedly concealing his or her marital status at the time of their purported marriage.<sup>2</sup> It has been said in this regard that a statute barring claims for damages for breach of a promise to marry does not bar a claim for fraud merely because the fraudulent misrepresentation involves an intention to marry.<sup>3</sup> However, where a woman knows that a man who has promised to marry her is already married, and the woman cannot by reason of public policy maintain a contract action for the defendant's breach of the promise to marry, the woman cannot sue in tort for fraud based on the promise to marry.<sup>4</sup>

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Footnotes

- 1 [In re Marriage of Buckley](#), 133 Cal. App. 3d 927, 184 Cal. Rptr. 290 (1st Dist. 1982); [Thorpe v. Collins](#), 245 Ga. 77, 263 S.E.2d 115 (1980).
- 2 [Holcomb v. Kincaid](#), 406 So. 2d 650 (La. Ct. App. 2d Cir. 1981), writ denied, 410 So. 2d 1136 (La. 1982), reconsideration not considered, 410 So. 2d 1148 (La. 1982) and reconsideration not considered, 412 So. 2d 991 (La. 1982).
- 3 [Turner v. Shavers](#), 96 Ohio App. 3d 769, 645 N.E.2d 1324 (10th Dist. Franklin County 1994).
- 4 [Thorpe v. Collins](#), 245 Ga. 77, 263 S.E.2d 115 (1980).

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## 37 Am. Jur. 2d Fraud and Deceit § 141

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### IV. False Representations

### G. Representations and Statements as to Particular Matters

### 1. In General

## § 141. Conception, birth control, and adoption

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#) , 27, 28

### A.L.R. Library

[Sexual partner's tort liability to other partner for fraudulent misrepresentation regarding sterility or use of birth control resulting in pregnancy, 2 A.L.R.5th 301](#)

A father is not permitted to maintain a misrepresentation claim against a mother even if she intentionally misrepresents her ability to conceive.<sup>1</sup> Public policy precludes tort actions to recover compensatory or punitive damages in connection with representations concerning birth control made before or during sexual relationships between consenting adults where the alleged wrong results in the birth of a normal, healthy child.<sup>2</sup> Similarly, public policy precludes a father, who is married to a woman other than the mother at the time of a child's conception, from maintaining an action against the mother for intentional misrepresentation, based on assertions that the father relied on the mother's assurances that she had taken adequate contraceptive measures.<sup>3</sup> Tort liability cannot apply to the choice, however motivated, of whether to conceive or bear a child, and although a defendant may deliberately misrepresent his intentions to a plaintiff in order to persuade her to have an abortion, their procreative decisions are so intensely private that courts will not intervene.<sup>4</sup>

Adoptive parents may recover for an adoption agency's material misrepresentations of fact about a child's history prior to adoption.<sup>5</sup> However, an action for wrongful adoption may not lie where the information provided is sufficient to predict any future health or emotional problems.<sup>6</sup>

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Footnotes

- 1 [Moorman v. Walker](#), 54 Wash. App. 461, 773 P.2d 887 (Div. 1 1989).
- 2 [C.A.M. v. R.A.W.](#), 237 N.J. Super. 532, 568 A.2d 556, 2 A.L.R.5th 1043 (App. Div. 1990).  
A man voluntarily cohabiting with a woman cannot maintain a cause of action for fraud against a woman falsely claiming to practice birth control, when the woman became pregnant and delivered a child. [Jose F. v. Pat M.](#), 154 Misc. 2d 883, 586 N.Y.S.2d 734 (Sup 1992).
- 3 [Welzenbach v. Powers](#), 139 N.H. 688, 660 A.2d 1133 (1995).
- 4 [Perry v. Atkinson](#), 195 Cal. App. 3d 14, 240 Cal. Rptr. 402 (4th Dist. 1987).
- 5 [Mohr v. Com.](#), 421 Mass. 147, 653 N.E.2d 1104, 74 A.L.R.5th 693 (1995); [Burr v. Board of County Com'rs of Stark County](#), 23 Ohio St. 3d 69, 491 N.E.2d 1101, 56 A.L.R.4th 357 (1986); [Gibbs v. Ernst](#), 538 Pa. 193, 647 A.2d 882 (1994).
- 6 [Richard P. v. Vista Del Mar Child Care Service](#), 106 Cal. App. 3d 860, 165 Cal. Rptr. 370 (2d Dist. 1980).

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## 37 Am. Jur. 2d Fraud and Deceit § 142

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### IV. False Representations

#### G. Representations and Statements as to Particular Matters

##### 1. In General

## § 142. Employment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  [27](#), [28](#)

### A.L.R. Library

[Employer's liability, under state law, for fraud or misrepresentation inducing employee to take early retirement, 14 A.L.R.5th 537](#)

[Employer's misrepresentation as to prospect, or duration of, employment as actionable fraud, 24 A.L.R.3d 1412](#)

### Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 28](#) (Complaint, petition, or declaration—For damages—Misrepresentation in soliciting prospective employees)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 29](#) (Complaint, petition, or declaration—For damages—False promise of employment)

An employee states a cause of action for fraud against an employer by alleging that the employee relies to his or her detriment on misinformation supplied by the employer.<sup>1</sup> This rule has been applied with respect to false representations concerning—



— the necessity that an employee on disability leave immediately return to work.<sup>2</sup>

— the length of employment.<sup>3</sup>

— the employer's willingness to pay hourly production workers for all time compensable under the Fair Labor Standards Act.<sup>4</sup> On the other hand, the courts have dismissed fraud claims brought by employees where the employer did not make any actionable misrepresentation<sup>5</sup> or where the employer's statements did not justify a subsequent action taken by the employee and thus did not support the claim for fraud.<sup>6</sup>

In the context of preemployment discussions, a general statement that a company's executives enjoy a stable and secure tenure is neither an actionable misrepresentation nor one upon which an employee can justifiably rely.<sup>7</sup> A representation to a potential employee that the applicant can expect to earn a certain amount per year is insufficient to support a fraud claim where the employee understands that the income figure is based on sales and is not an absolute guarantee.<sup>8</sup> Similarly, a former employee cannot recover for fraudulent misrepresentation for statements as to the employee's future employment status made in connection with the signing of a separation agreement and release where the employee fails to show that the employer promised the employee anything other than consulting services, and it continued to utilize the employee in that capacity.<sup>9</sup>

The general rule that promissory statements do not generally support an action for fraud<sup>10</sup> is followed with respect to promises of employment<sup>11</sup> although there are exceptions with regards to this type of promise.<sup>12</sup> It has been held that liability can not be premised on promises of a job for life with yearly income at a certain level.<sup>13</sup> Similarly, promises as to the management of a plaintiff's pension plan involve promises of future performance and thus do not give rise to liability for tortious misrepresentation.<sup>14</sup> However, promises by an educational institution of employment upon graduation have been treated as actionable.<sup>15</sup>

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#### Footnotes

- 1 [Freedman v. Pearlman](#), 271 A.D.2d 301, 706 N.Y.S.2d 405 (1st Dep't 2000) (misrepresentations regarding income).
- 2 [Pugh v. Kaiser Aluminum & Chemical Sales, Inc.](#), 369 So. 2d 796 (Ala. 1979).
- 3 [Finch v. Brenda Raceway Corp.](#), 22 Cal. App. 4th 547, 27 Cal. Rptr. 2d 531 (1st Dist. 1994).
- 4 [Anderson v. Sara Lee Corp.](#), 508 F.3d 181 (4th Cir. 2007) (applying North Carolina law).
- 5 [Davis v. Dawson, Inc.](#), 15 F. Supp. 2d 64 (D. Mass. 1998).
- 6 [Glasgow v. Sherwin-Williams Co.](#), 901 F. Supp. 1185 (N.D. Miss. 1995), *aff'd*, 146 F.3d 867 (5th Cir. 1998); [Hayes v. Cleveland Pneumatic Co.](#), 92 Ohio App. 3d 36, 634 N.E.2d 228 (8th Dist. Cuyahoga County 1993).
- 7 [Whelan v. CareerCom Corp.](#), 711 F. Supp. 198 (M.D. Pa. 1989) (applying Pennsylvania law).
- 8 [Wilson v. Popp Yarn Corp.](#), 680 F. Supp. 208 (W.D. N.C. 1988); [Penzell v. Taylor](#), 219 Ill. App. 3d 680, 162 Ill. Dec. 142, 579 N.E.2d 956 (1st Dist. 1991) (particularly where the statement was further conditioned on the executive's best efforts).
- 9 [Horton v. Telxon Corp.](#), 99 Ohio Misc. 2d 83, 716 N.E.2d 786 (C.P. 1999).
- 10 As to false representations by physicians, generally, see § 139.
- 11 [Scullin v. Newman](#), 127 Ark. 227, 191 S.W. 922 (1917); [Hudson v. Venture Industries, Inc.](#), 147 Ga. App. 31, 248 S.E.2d 9 (1978), judgment *aff'd*, 243 Ga. 116, 252 S.E.2d 606 (1979).
- 12 [Lewis v. Finetex, Inc.](#), 488 F. Supp. 12 (D.S.C. 1977) (oral promise to hire for 18 months); [Payne v. Scholnick](#), 257 A.D. 923, 12 N.Y.S.2d 242 (4th Dep't 1939) (inducing plaintiff to leave his employment

and enter the defendant's on the assurance that the latter was going to stay in business, whereas he intended to sell out as soon as possible); [Mid-West Chevrolet Corp. v. Noah, 1935 OK 665, 173 Okla. 198, 48 P.2d 283 \(1935\)](#) (automobile dealer's deliberate misrepresentation to a truck purchaser that he would be given certain work with the truck).

13 [Barrett v. Independent Order of Foresters, 625 F.2d 73 \(5th Cir. 1980\)](#) (applying Georgia law).

14 [Stoler v. Metropolitan Life Ins. Co., 287 So. 2d 694 \(Fla. 3d DCA 1974\)](#).

15 [Schwitters v. Des Moines Commercial College, 199 Iowa 1058, 203 N.W. 265 \(1925\)](#) (promise that a commercial school student could complete the course and obtain a position in a certain number of weeks).

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## 37 Am. Jur. 2d Fraud and Deceit § 143

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### IV. False Representations

### G. Representations and Statements as to Particular Matters

### 1. In General

## § 143. Insurance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

### Trial Strategy

[Actions on Life Insurance Policies](#), 12 Am. Jur. Trials 549

An action in tort may be based upon a misrepresentation that insurance coverage has been effected when no policy or binder has been issued, especially where monthly premiums have been collected and retained on an insurance policy found not to have existed.<sup>1</sup> The act of accepting premiums constitutes a representation by an insurer that a policy is in full force and effect, and such a representation, when made without the corresponding intent to pay the proceeds in the event of a claim and coupled with reliance by the insured, constitutes willful fraud.<sup>2</sup>

Allegations that an insurer had actual knowledge that the life insurance policies it sold insureds violated existing tax law when sold, contrary to the insurer's written and oral representations, sufficiently allege misrepresentation of a material fact, as required to state a fraud claim.<sup>3</sup>

On the other hand, a title insurer is not liable in fraud to an insured purchaser for failing to include coverage for mechanics' liens in an owner's policy where there is no obligation to provide the owner's a policy covering mechanics' liens; there is no misrepresentation about what the policy excludes, either intentionally, recklessly, or otherwise; and the purchasers never express

a desire for a policy that does not exclude mechanics' liens.<sup>4</sup> Moreover, an automobile insurer has no duty independent of the insurance policy to inform the insured of benefits to which he or she might be entitled, and thus, the insurer's failure to disclose does not amount to negligence or silent fraud, where the insured does not claim that the insurer made any specific misrepresentations, and there is no indication that the insurer provided partial, misleading information.<sup>5</sup> Similarly, an insured's action against a homeowner's insurer under a theory of apparent authority, based on the alleged misrepresentations of an insurance agency with regard to the existence of flood coverage under the policy, is barred by the "duty to read" and "imputed knowledge" doctrines where the alleged misrepresentations were made by the agency to the insureds rather than to the insurer, and the insureds possessed the policy, which directly conflicted with the alleged misrepresentations, well before the loss occurred.<sup>6</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Insured, whose premium for long-term care policy increased over 76% after expiration of policy's ten-year rate guarantee rider, did not sufficiently allege that insurer had duty to disclose that it was going to raise future rates far in excess of 20%, and, thus, failed to state claim for fraudulent omissions under Illinois law, since fact that insured's highest level of education was high school and that she had no knowledge related to long-term care insurance did not create any special relationship of trust and confidence, and insurer's statement that it "may" impose rate increase meant that insurer had right to change rates, rather than any half-truth concerning possibility that insurer would change rates. [Toulon v. Continental Casualty Company](#), 877 F.3d 725 (7th Cir. 2017).

Under New York law, to establish a fiduciary duty, as required for negligent misrepresentation claim, an insured must plead some extraordinary circumstance, such as efforts by an insurer to gain the insured's trust or confidence. [Paraco Gas Corp. v. Travelers Cas. and Sur. Co. of America](#), 51 F. Supp. 3d 379 (S.D. N.Y. 2014).

Automobile repair shop failed to adequately allege that insurers had a special relationship with the shop imposing a duty on them to impart correct information to the plaintiff, that the insurers imparted any information to the shop, or that the shop relied on any such information, and thus shop failed to state cause of action for negligent misrepresentation in connection with insurers' alleged unlawful efforts to "steer" insureds with claims for damage to their commercial vehicles away from shop. [Pesce Bros., Inc. v. Cover Me Ins. Agency of NJ, Inc.](#), 144 A.D.3d 1120, 43 N.Y.S.3d 85 (2d Dep't 2016).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [Young v. Carrollton Federal Sav. & Loan Ass'n](#), 159 Ga. App. 836, 285 S.E.2d 264 (1981).
- 2 [Intercontinental Life Ins. Co. v. Lindblom](#), 598 So. 2d 886 (Ala. 1992).
- 3 [Zarella v. Pacific Life Ins. Co.](#), 809 F. Supp. 2d 1357 (S.D. Fla. 2011) (applying Florida law).
- 4 [Clements v. Mississippi Valley Title Ins. Co.](#), 612 So. 2d 1172 (Ala. 1992).
- 5 [Dugan v. State Farm Mut. Auto. Ins. Co.](#), 845 F. Supp. 2d 803 (E.D. Mich. 2012) (applying Michigan law).
- 6 [Mladineo v. Schmidt](#), 52 So. 3d 1154 (Miss. 2010).

## 37 Am. Jur. 2d Fraud and Deceit § 144

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### Fraud and Deceit

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### IV. False Representations

### G. Representations and Statements as to Particular Matters

### 1. In General

## § 144. Insurance—Fraud by insured or third party

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

### Trial Strategy

[Actions on Life Insurance Policies](#), 12 Am. Jur. Trials 549

A bank, operating as a premium finance agency, is liable to an insurer, under a theory of negligent misrepresentation, for incorrectly notifying the insurer that a policy has been cancelled where the bank knows that the statement of cancellation is required by the insurer for a serious purpose; the bank knows that the insurer will rely on the notice of cancellation and will be damaged by its reliance if the notice is either inaccurate or ineffective; and the bank, in assuming the burden of administering the policy, also assumed a correlative duty of accurately informing the insurer of its status.<sup>1</sup>

Fraud has also been predicated on a physician's false representations to an insurer made in medical reports and billings submitted to the insurer by the physician on behalf of the insureds.<sup>2</sup>

In addition, a patient asserts fraud where a physician represents that a form is being signed to determine if there is insurance coverage when in fact the form is submitted to obtain payment<sup>3</sup>

Footnotes

- 1 [Home Mut. Ins. Co. v. Broadway Bank and Trust Co.](#), 100 Misc. 2d 228, 417 N.Y.S.2d 856 (Sup 1979), judgment aff'd, 76 A.D.2d 24, 429 N.Y.S.2d 948 (4th Dep't 1980), order aff'd, 53 N.Y.2d 568, 444 N.Y.S.2d 436, 428 N.E.2d 842, 26 A.L.R.4th 337 (1981).
- 2 [State Farm Fire and Cas. Co. v. Huynh](#), 92 Wash. App. 454, 962 P.2d 854 (Div. 1 1998).
- 3 [Thomas v. Halstead](#), 605 So. 2d 1181 (Ala. 1992) (dentist).

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## 37 Am. Jur. 2d Fraud and Deceit § 145

American Jurisprudence, Second Edition | May 2021 Update

### Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

### IV. False Representations

#### G. Representations and Statements as to Particular Matters

##### 1. In General

## § 145. Representations or promises as to improvements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

Fraud may be established by proof that a purchaser of land, acting as a person of ordinary prudence, has been induced to enter into a contract to buy land by a representation of the vendor, known by the latter to be false, that an improvement has been made or is in existence in the neighborhood of the land at the time of the representation.<sup>1</sup> The fraudulent character of a material misrepresentation of a past or existing fact, made by a vendor and relied on by a purchaser to the purchaser's damage, is not altered by the circumstance that the fact misrepresented is preparatory to an improvement to be made in the future.<sup>2</sup>

A statement by a vendor of the vendor's intention to make improvements on property adjacent to that sold, if a mere promise or expression of opinion as to the future, and made in good faith, is not fraudulent and gives the purchaser no right to rescind merely because such intention or promise is not carried out.<sup>3</sup> However, representations of intention to improve real property where no such intention exists are fraudulent,<sup>4</sup> and therefore, if it appears that the vendor has no intention of making the improvement, a representation by the vendor that the vendor intends to make an improvement in the neighborhood of the land sold will constitute fraud as against a purchaser who, as a person of ordinary prudence, relies on the representation and because of a reliance on the misrepresentations suffers damage.<sup>5</sup> Thus, false representations by one disposing of land of an intention to make improvements that will benefit the property disposed of are generally regarded as ground for rescinding the contract<sup>6</sup> and a good defense to a suit for its specific performance.<sup>7</sup>

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### Footnotes

- 1                   Pocatello Security Trust Co. v. Henry, 35 Idaho 321, 206 P. 175, 27 A.L.R. 337 (1922); Roberts v. James, 83 N.J.L. 492, 85 A. 244 (N.J. Ct. Err. & App. 1912).  
Adjacent landowners who sold a lot to the plaintiffs and represented to them that the cottage obstructing the view of the ocean would be removed were guilty of fraud when the cottage was moved to an adjacent lot and continued to block the plaintiffs' view. *Malerba v. Warren*, 108 Misc. 2d 785, 438 N.Y.S.2d 936 (Sup 1981), judgment modified on other grounds, 96 A.D.2d 529, 464 N.Y.S.2d 835 (2d Dep't 1983).
- 2                   Pocatello Security Trust Co. v. Henry, 35 Idaho 321, 206 P. 175, 27 A.L.R. 337 (1922); Roberts v. James, 83 N.J.L. 492, 85 A. 244 (N.J. Ct. Err. & App. 1912).
- 3                   Mid-Continent Life Ins. Co. v. Pendleton, 202 S.W. 769 (Tex. Civ. App. San Antonio 1918); Stewart v. Larkin, 74 Wash. 681, 134 P. 186 (1913).  
As to statements as to future events, generally, see §§ 84, 85, 86.  
As to promises made with intention not to perform, see §§ 94 to 100.
- 4                   Pocatello Security Trust Co. v. Henry, 35 Idaho 321, 206 P. 175, 27 A.L.R. 337 (1922).
- 5                   Roberts v. James, 83 N.J.L. 492, 85 A. 244 (N.J. Ct. Err. & App. 1912).
- 6                   Pocatello Security Trust Co. v. Henry, 35 Idaho 321, 206 P. 175, 27 A.L.R. 337 (1922); Rodgers v. Johnson, 47 S.D. 131, 196 N.W. 295 (1923).
- 7                   Roberts v. James, 83 N.J.L. 492, 85 A. 244 (N.J. Ct. Err. & App. 1912); Mid-Continent Life Ins. Co. v. Pendleton, 202 S.W. 769 (Tex. Civ. App. San Antonio 1918).  
As to fraud as defeating specific performance, generally, see *Am. Jur. 2d, Specific Performance* §§ 63 to 68.

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## 37 Am. Jur. 2d Fraud and Deceit § 146

American Jurisprudence, Second Edition | May 2021 Update

### Fraud and Deceit

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### IV. False Representations

#### G. Representations and Statements as to Particular Matters

##### 1. In General

## § 146. Representations or promises as to improvements—By vendee or transferee

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

If a purchaser, to induce a vendor to make a sale, promises to make certain improvements upon the land or improvements in the neighborhood that would enhance the value of other land of the vendor or that would otherwise benefit the vendor, when the purchaser has no intention of doing so, the vendor may rescind the transaction.<sup>1</sup> However, a mere promise by the vendee in regard to improvements to be located on the property is not fraud unless the promise is a device to accomplish fraud.<sup>2</sup>

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### Footnotes

- 1 [Braddy v. Elliott](#), 146 N.C. 578, 60 S.E. 507 (1908).
- 2 [Braddy v. Elliott](#), 146 N.C. 578, 60 S.E. 507 (1908); [Chicago, T. & M.C. Ry. Co. v. Titterington](#), 84 Tex. 218, 19 S.W. 472 (1892).

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## 37 Am. Jur. 2d Fraud and Deceit § 147

American Jurisprudence, Second Edition | May 2021 Update

### Fraud and Deceit

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### IV. False Representations

### G. Representations and Statements as to Particular Matters

### 1. In General

## § 147. Purpose for which property is acquired or intended use thereof

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

### Trial Strategy

[Real-Estate Broker's Misrepresentation or Nondisclosure as to Condition or Value of Realty, 39 Am. Jur. Proof of Facts 3d 309](#)

A misstatement or misrepresentation made in the negotiations for the purchase of land as to the use that the purchaser intends to make of the land or the purpose for which the purchaser wants it does not necessarily constitute fraud,<sup>1</sup> especially where the use for a different purpose from that stated does not injuriously affect the vendor by reason of the vendor's ownership of other land in the vicinity.<sup>2</sup> A false statement or representation relating to the purpose for which the purchaser is buying the land or to the use that the purchaser intends to make of it is of no consequence unless it appears that the statement or representation made was material and that the vendor relied upon it and was induced to enter into the contract thereby.<sup>3</sup> However, some courts hold that statements by a purchaser of, or by one similarly acquiring, land as to the use the purchaser intends to make of it are statements of existing facts, and not mere promises of what will be done in the future, and if false and known to be false by the purchaser will warrant the vendor in rescinding the contract of sale if relied on by the vendor to the vendor's damage as, for example, a statement by the purchaser that the purchaser intends to erect dwellings on the property when in fact the purchaser intends to erect a garage.<sup>4</sup> Indeed, many courts take the position that fraud entitling the vendor to rescind may be found from the facts that the purchaser induced the vendor to sell by falsely representing the use for which the purchaser desired the land,

knowing that the sale would not be made if the vendor was aware of the purpose or use for which the purchaser wanted the land, particularly where such use of the land would injure the value of other land in the vicinity.<sup>5</sup>

No charge of fraud will lie where the intended use of property is stated in good faith, but the purchaser afterward changes his or her mind.<sup>6</sup> The mere fact that the purpose of the purchaser is speculation, and that the purchaser intends to make a profit out of the transaction, does not constitute fraud or unfair dealing, for this is frequently the purpose of purchasing property.<sup>7</sup>

Conversely, statements by a vendor or the vendor's agent to the effect that property may be used for a specific purpose when in fact it cannot is evidence of fraud.<sup>8</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Under Florida law, defendant engaged in common-law fraud by engaging in scheme involving the unauthorized and unlawful sale of wireless service provider's prepaid airtime minutes; defendant knowingly made false statements to provider's employees in order to coerce them into adding free airtime to prearranged phone numbers, and provider's employees acted upon defendant's false statements and added free airtime minutes to certain phone numbers, which resulted in financial loss to provider. [TracFone Wireless, Inc. v. Adams](#), 98 F. Supp. 3d 1243 (S.D. Fla. 2015).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [Stackpole v. Hancock](#), 40 Fla. 362, 24 So. 914 (1898).
- 2 [Parsons v. Detroit & M.R. Co.](#), 122 Mich. 462, 81 N.W. 343 (1899); [State v. Blize](#), 37 Or. 404, 61 P. 735 (1900).
- 3 [Lucas v. Long](#), 125 Md. 420, 94 A. 12 (1915); [Brown v. Honiss](#), 74 N.J.L. 501, 68 A. 150 (N.J. Ct. Err. & App. 1907).
- 4 [Adams v. Gillig](#), 199 N.Y. 314, 92 N.E. 670 (1910); [Whitcomb v. Moody](#), 49 S.W.2d 513 (Tex. Civ. App. Waco 1932), writ refused, (July 19, 1932).
- 5 [Brett v. Cooney](#), 75 Conn. 338, 53 A. 729 (1902); [Adams v. Gillig](#), 199 N.Y. 314, 92 N.E. 670 (1910).
- 6 [Bryan v. Louisville & N.R. Co.](#), 292 Mo. 535, 238 S.W. 484, 23 A.L.R. 537 (1921).
- 7 [Cummins v. Beavers](#), 103 Va. 230, 48 S.E. 891 (1904).
- 8 [Lepera v. Fuson](#), 83 Ohio App. 3d 17, 613 N.E.2d 1060 (1st Dist. Hamilton County 1992).

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## 37 Am. Jur. 2d Fraud and Deceit § 148

American Jurisprudence, Second Edition | May 2021 Update

### Fraud and Deceit

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### IV. False Representations

#### G. Representations and Statements as to Particular Matters

##### 1. In General

## § 148. Representations to contractor as to amount or character of work, materials, cost, or soil conditions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

Misrepresentations with reference to matters affecting the amount or character of work to be performed under a contract, or the cost or expense of the performance thereof, may constitute the basis for rescission of the contract<sup>1</sup> or for an action for damages in fraud and deceit.<sup>2</sup> This rule would seem to be most frequently applicable to building and construction contracts.<sup>3</sup> While indefinite statements, expressions of opinion, and conjectural views as to the amount of work or materials or the cost thereof are not actionable,<sup>4</sup> statements purporting to be factual and based upon superior knowledge, information, and investigation with respect to the work or materials required may constitute the basis for an action in fraud.<sup>5</sup> A gross underestimate of the amount of work required, even though advanced as approximate only, may be found to be a misrepresentation of fact.<sup>6</sup>

Fraud justifying rescission or damages may be based in a proper case on misrepresentations by an owner to a contractor with respect to conditions below the surface.<sup>7</sup> The complaint is usually based on some inaccuracy or inadequacy in notation on plans, in specifications, in the advertisements for bids, in profile drawings, or in records of soundings or of borings.<sup>8</sup> Although the statement of an opinion as to the existence of certain conditions is not an actionable representation of fact, where the statement may be taken as either one of opinion or one of fact, it is for the jury to decide whether the contractor was warranted in relying upon it as one of fact.<sup>9</sup>

### Observation:

The line between the mere presentation of the results of point borings, and the representation of general conditions based on such borings, is crossed where an owner's engineers show profile maps, or notations on plans, purporting to give subsoil conditions in general, and a contractor, under certain circumstances, may get relief on the basis of such a representation where the contractor relied upon it to the contractor's injury.<sup>10</sup>

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#### Footnotes

- 1 [Prest v. Inhabitants of Town of Farmington](#), 117 Me. 348, 104 A. 521, 2 A.L.R. 1390 (1918); [Long v. Inhabitants of Athol](#), 196 Mass. 497, 82 N.E. 665 (1907).
- 2 [Busch v. Wilcox](#), 82 Mich. 315, 46 N.W. 940 (1890), *aff'd*, 82 Mich. 336, 47 N.W. 328 (1890); [Sell v. Mississippi River Logging Co.](#), 88 Wis. 581, 60 N.W. 1065 (1894).
- 3 [Am. Jur. 2d, Building and Construction Contracts](#) § 110.
- 4 [Ariss-Knapp Co. v. Sonoma County](#), 73 Cal. App. 262, 238 P. 752 (1st Dist. 1925).
- 5 [Board of Water Com'rs of City of New London v. Robbins & Potter](#), 82 Conn. 623, 74 A. 938 (1910).
- 6 [Long v. Inhabitants of Athol](#), 196 Mass. 497, 82 N.E. 665 (1907).
- 7 [Elkan v. Sebastian Bridge Dist.](#), 291 F. 532 (C.C.A. 8th Cir. 1923); [Arthur A. Johnson Corp. v. Com.](#), 318 Mass. 88, 60 N.E.2d 364 (1945).
- 8 [Elkan v. Sebastian Bridge Dist.](#), 291 F. 532 (C.C.A. 8th Cir. 1923); [Arthur A. Johnson Corp. v. Com.](#), 318 Mass. 88, 60 N.E.2d 364 (1945).
- 9 [McClung Const. Co. v. Muncy](#), 65 S.W.2d 786 (Tex. Civ. App. Amarillo 1933), *writ dismissed*.
- 10 [E. & F. Const. Co. v. Town of Stamford](#), 114 Conn. 250, 158 A. 551 (1932).

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## 37 Am. Jur. 2d Fraud and Deceit § 149

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### Fraud and Deceit

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### IV. False Representations

#### G. Representations and Statements as to Particular Matters

##### 1. In General

## § 149. Representations as to source or supply of, capacity to produce, or sales commitments regarding, articles

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

Misrepresentations of a seller as to the source of an article and capacity to manufacture it are actionable.<sup>1</sup> Although representations as to supply, productive capacity, and sales commitments regarding articles may, when standing alone, relate to existing facts and be actionable,<sup>2</sup> where the uncommitted capacity and supply are represented to be adequate to provide the plaintiff with a specified quantity of an article every month, apparently for an unlimited period, the representations constitute predictions or expressions of future expectations, or in the alternative, statements promissory in nature insofar as they imply an engagement or intention to maintain for the plaintiff's benefit an uncommitted capacity and supply at the level specified and are therefore not actionable.<sup>3</sup>

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### Footnotes

- <sup>1</sup> [Tele King Corp. v. Abeles](#), 282 A.D. 755, 123 N.Y.S.2d 95 (1st Dep't 1953).
- <sup>2</sup> [Channel Master Corp. v. Aluminum Limited Sales, Inc.](#), 2 A.D.2d 933, 156 N.Y.S.2d 585 (3d Dep't 1956).  
A statement by a district manager of a tool manufacturer to distributors that the manager had been to the company warehouse and had seen the tools and that there were enough to fill 80% of all orders was sufficient to make out claim for deceit. [Nickerson v. Matco Tools Corp., Div. of Jacobs Mfg. Co.](#), 813 F.2d 529 (1st Cir. 1987).  
A statement in a project owner's letter to a steel supplier offering to tender direct payments to the supplier upon delivery of the steel to a manufacturer which had contracted to fabricate components for a steel building was not a material misrepresentation required to support a fraudulent inducement claim under

Pennsylvania law; the letter did not misrepresent that the owner guaranteed to satisfy the supplier's invoices if the manufacturer failed to do so but was instead an administrative proposal to streamline payments. [EBC, Inc. v. Clark Bldg. Systems, Inc.](#), 618 F.3d 253, 77 Fed. R. Serv. 3d 421 (3d Cir. 2010) (applying Pennsylvania law).

3 [Channel Master Corp. v. Aluminum Limited Sales, Inc.](#), 2 A.D.2d 933, 156 N.Y.S.2d 585 (3d Dep't 1956).

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## 37 Am. Jur. 2d Fraud and Deceit § 150

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### Fraud and Deceit

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### IV. False Representations

#### G. Representations and Statements as to Particular Matters

##### 1. In General

## § 150. Falsely attesting signature; attesting instrument without seeing it signed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

### A.L.R. Library

[Civil liability of witness falsely attesting signature to document, 96 A.L.R.2d 1346](#)

[Misrepresentations as to financial condition or credit of third person as actionable by one extending credit in reliance thereon, 32 A.L.R.2d 184](#)

Fraud may be predicated upon the attesting of a signature, knowing it to be false.<sup>1</sup> Moreover, one who attests an instrument without seeing it signed may be liable in fraud on the basis of an implied misrepresentation where the signature to the instrument is not genuine.<sup>2</sup> Thus, a person who falsely attests that a signature on a document has been made in the person's presence or acknowledged by the signer in the person's presence has been held liable to another who relies on the false attestation and suffers damage thereby.<sup>3</sup> On the other hand, civil liability predicated upon the act of a witness in falsely attesting a signature to a document has been denied.<sup>4</sup>

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### Footnotes

<sup>1</sup> [Mendenhall v. Stewart, 18 Ind. App. 262, 47 N.E. 943 \(1897\).](#)



- 2 McCray Refrigerator Co. v. Uramoto, 79 Nev. 294, 382 P.2d 600, 96 A.L.R.2d 1339 (1963).  
3 McCray Refrigerator Co. v. Uramoto, 79 Nev. 294, 382 P.2d 600, 96 A.L.R.2d 1339 (1963).  
4 Motor Credit Co. v. Tremper, 121 N.J.L. 91, 1 A.2d 301 (N.J. Sup. Ct. 1938) (complaint did not contain well pleaded charge of fraud).

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## 53A Am. Jur. 2d Money I A Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Money

Eleanor L. Grossman, J.D. and Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.

#### I. What Constitutes Money and Legal Tender

##### A. Definitions

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#) 🔑1, 2

West's Key Number Digest, [Payment](#) 🔑10 to 12(5)

### A.L.R. Library

A.L.R. Index, Comptroller of Currency

A.L.R. Index, Federal Reserve Board and System

A.L.R. Index, Money or Cash

West's A.L.R. Digest, [Currency Regulation](#) 🔑1, 2

West's A.L.R. Digest, [Payment](#) 🔑10 to 12(5)

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## 53A Am. Jur. 2d Money § 1

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### Money

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#### I. What Constitutes Money and Legal Tender


##### A. Definitions

## § 1. Money

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

#### A.L.R. Library

[What passes under term "personal property" in will, 31 A.L.R.5th 499](#)

[Term "money" or "moneys" in will as including real property, 76 A.L.R.3d 1254](#)

[What constitutes "money" within coverage or exclusion of theft or other crime policy, 68 A.L.R.3d 1179](#)

The term "money" has been broadly defined as any article or substance used as a medium of exchange, measure of wealth, or means of payment, as checks, wampum, etc.<sup>1</sup> In its broader sense, "money" designates the entire medium of exchange recognized by the custom of merchants and the laws of a country.<sup>2</sup> In this sense, it encompasses wealth, capital, property,<sup>3</sup> and anything else that is transferable in commerce.<sup>4</sup>

In various situations, money has specifically been defined to include:

- cash<sup>5</sup>
- gold, silver, and other coin<sup>6</sup>

- dollars or lawful money of the United States<sup>7</sup>
  - circulating notes of national banking associations<sup>8</sup>
  - Federal Reserve notes<sup>9</sup>
  - United States Treasury notes<sup>10</sup>
  - United States legal tender,<sup>11</sup> United States legal tender notes,<sup>12</sup> or the legal tender of any other state or nation<sup>13</sup>
  - currency<sup>14</sup>
- Other authority holds that money, in its ordinary sense, does not embrace notes, bonds, evidences of debt, or other personal real estate.<sup>15</sup>

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#### Footnotes

- 1 [In re Forfeiture of \\$111,144](#), 191 Mich. App. 524, 478 N.W.2d 718 (1991).  
Money is something generally accepted as a means of payment. [U.S. v. Jackson](#), 759 F.2d 342 (4th Cir. 1985).
- 2 [State v. Finnegean](#), 127 Iowa 286, 103 N.W. 155 (1905); [Vick v. Howard](#), 136 Va. 101, 116 S.E. 465, 31 A.L.R. 240 (1923).  
Money in the country where it is current is both a measure of value and a medium of exchange. In other countries, it is a commodity. [Richard v. American Union Bank](#), 253 N.Y. 166, 170 N.E. 532, 69 A.L.R. 667 (1930).  
As to the power of Congress to declare what is money, see § 25.
- 3 [In re Robinson's Estate](#), 175 Misc. 433, 23 N.Y.S.2d 905 (Sur. Ct. 1940); [Fleck v. Harmstad](#), 304 Pa. 302, 155 A. 875, 77 A.L.R. 874 (1931).
- 4 [Leslie v. Reynolds](#), 179 Kan. 422, 295 P.2d 1076 (1956).
- 5 [Apex Financial Corp. of Pa. v. DeRiemer](#), 1987 WL 14871 (Del. Super. Ct. 1987).  
As to the definition of "cash," see § 3.
- 6 [U.S. v. Jackson](#), 759 F.2d 342 (4th Cir. 1985); [U.S. v. Fernando](#), 745 F.2d 1328 (10th Cir. 1984); [In re Cordy](#), 254 B.R. 413 (Bankr. N.D. Ohio 2000); [Sayble v. Feinman](#), 76 Cal. App. 3d 509, 142 Cal. Rptr. 895 (2d Dist. 1978); [Matter of Protest of Strayer](#), 239 Kan. 136, 716 P.2d 588 (1986); [Mentor v. Battersby](#), 2005-Ohio-3387, 2005 WL 1538241 (Ohio Ct. App. 11th Dist. Lake County 2005).
- 7 [Apex Financial Corp. of Pa. v. DeRiemer](#), 1987 WL 14871 (Del. Super. Ct. 1987).  
As to the definition of "dollar," see § 7.
- 8 § 10.
- 9 § 8.
- 10 [Matter of Protest of Strayer](#), 239 Kan. 136, 716 P.2d 588 (1986).
- 11 [Apex Financial Corp. of Pa. v. DeRiemer](#), 1987 WL 14871 (Del. Super. Ct. 1987).  
As to legal tender, generally, see § 11.
- 12 [Mentor v. Battersby](#), 2005-Ohio-3387, 2005 WL 1538241 (Ohio Ct. App. 11th Dist. Lake County 2005).
- 13 [Apex Financial Corp. of Pa. v. DeRiemer](#), 1987 WL 14871 (Del. Super. Ct. 1987).
- 14 [U.S. v. Jackson](#), 759 F.2d 342 (4th Cir. 1985); [U.S. v. Fernando](#), 745 F.2d 1328 (10th Cir. 1984); [Apex Financial Corp. of Pa. v. DeRiemer](#), 1987 WL 14871 (Del. Super. Ct. 1987); [Matter of Protest of Strayer](#), 239 Kan. 136, 716 P.2d 588 (1986).  
"Money" includes paper money or currency circulating as a medium of exchange. [In re Cordy](#), 254 B.R. 413 (Bankr. N.D. Ohio 2000); [Sayble v. Feinman](#), 76 Cal. App. 3d 509, 142 Cal. Rptr. 895 (2d Dist. 1978).  
As to the definition of "currency," see § 5.

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U.S. v. Fernando, 745 F.2d 1328 (10th Cir. 1984); In re Cordy, 254 B.R. 413 (Bankr. N.D. Ohio 2000); Sayble v. Feinman, 76 Cal. App. 3d 509, 142 Cal. Rptr. 895 (2d Dist. 1978).

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## 53A Am. Jur. 2d Money § 2

American Jurisprudence, Second Edition | May 2021 Update

### Money

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### I. What Constitutes Money and Legal Tender

#### A. Definitions

## § 2. Money—Under Uniform Commercial Code

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10, 12(.5) to 12(5)

#### A.L.R. Library

[What constitutes "money" within meaning of Uniform Commercial Code, 40 A.L.R.4th 346](#)

#### Trial Strategy

[Proof of Value of Coin Collection, 95 Am. Jur. Proof of Facts 3d 155](#)

#### Law Reviews and Other Periodicals

Schroeder, [Bitcoin and the Uniform Commercial Code, 24 U. Miami Bus. L. Rev. 1 \(Spring 2016\)](#)

As used in the Uniform Commercial Code, "money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.<sup>1</sup>

**Comment:**

The test is that of sanction of government, whether by authorization before issue or adoption afterward, which recognizes the circulating medium as a part of the official currency of that government. The narrow view that money is limited to legal tender is rejected.<sup>2</sup>

The U.C.C. definition of "money" does not include the right to receive money but rather is limited to currency.<sup>3</sup> Furthermore, the U.C.C. definition does not include money that is treated as a commodity rather than as a medium of exchange, such as coins of purely numismatic value.<sup>4</sup>

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**Footnotes**

- 1 [U.C.C. § 1-201\(b\)\(24\).](#)
- 2 [U.C.C. § 1-201, Official Comment 24.](#)  
[As to legal tender, see §§ 11 to 16.](#)
- 3 [Christison v. U.S., 960 F.2d 613, 17 U.C.C. Rep. Serv. 2d 337 \(7th Cir. 1992\); In re E-Z Serve Convenience Stores, Inc., 299 B.R. 126, 51 U.C.C. Rep. Serv. 2d 858 \(Bankr. M.D. N.C. 2003\), aff'd, 318 B.R. 637 \(M.D. N.C. 2004\) \(applying North Carolina law\).](#)  
[As to the definition of "currency," see § 5.](#)
- 4 [In re Midas Coin Co., 264 F. Supp. 193, 4 U.C.C. Rep. Serv. 220 \(E.D. Mo. 1967\), judgment aff'd, 387 F.2d 118, 4 U.C.C. Rep. Serv. 908 \(8th Cir. 1968\) \(applying Missouri law\).](#)

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## 53A Am. Jur. 2d Money § 3

American Jurisprudence, Second Edition | May 2021 Update

### Money

Eleanor L. Grossman, J.D. and Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.


### I. What Constitutes Money and Legal Tender

#### A. Definitions

## § 3. Cash

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  12(.5) to 12(5)

### Forms

Forms regarding medium of payment—currency or check, see Am. Jur. Legal Forms 2d, Payment [[Westlaw®\(r\) Search Query](#)]

Courts have frequently held that "cash" means money or its equivalent,<sup>1</sup> or "ready money"<sup>2</sup> at one's command, subject to free disposal and not tied up in a fixed state.<sup>3</sup> On the other hand, a promise to pay money in the future is not cash.<sup>4</sup> Courts have held "cash" to include:

- currency and coin<sup>5</sup>
- bank bills<sup>6</sup>
- savings bonds of the United States at face value<sup>7</sup>
- the right to receive a refund of federal, state, and local income taxes<sup>8</sup>
- balances in bank accounts<sup>9</sup> or deposit accounts in any state or federally chartered depository institution.<sup>10</sup>



• negotiable checks<sup>11</sup> or certified checks<sup>12</sup>

• drafts, notes, and bearer bonds<sup>13</sup>

Under federal banking statutes dealing with expedited funds availability, "cash" means United States coins and currency, including Federal Reserve notes.<sup>14</sup>

**Observation:**

In the narrow sense,<sup>15</sup> "cash" means money.<sup>16</sup> However, in commercial transactions, the word has been construed in several ways, depending on the circumstances in which it is used.<sup>17</sup> Thus, "cash" has been defined more broadly to include instruments other than currency.<sup>18</sup> It has been interpreted as the antonym of "credit."<sup>19</sup>

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**Footnotes**

- 1 In re Manning, 280 B.R. 171 (Bankr. S.D. Ohio 2002); Scott v. Wallace, 686 So. 2d 1241 (Ala. Civ. App. 1996); United Parcel Service, Inc. v. Universal Diamond Corp., Inc., 200 Ga. App. 794, 409 S.E.2d 558 (1991); Woods v. Woods, 95 Ohio App. 3d 222, 642 N.E.2d 45 (3d Dist. Hancock County 1994); Ragsdale v. Cherokee Nation Election Com'n, 1 Am. Tribal Law 42, 6 Okla. Trib. 591, 1998 WL 34067272 (N.A. 1998); Hardy v. State, 50 S.W.3d 689 (Tex. App. Waco 2001), aff'd but criticized on other grounds, 102 S.W.3d 123 (Tex. 2003); Diamond B Services, Inc. v. Rohde, 2005 WY 130, 120 P.3d 1031 (Wyo. 2005).
- 2 In re Manning, 280 B.R. 171 (Bankr. S.D. Ohio 2002); Scott v. Wallace, 686 So. 2d 1241 (Ala. Civ. App. 1996); United Parcel Service, Inc. v. Universal Diamond Corp., Inc., 200 Ga. App. 794, 409 S.E.2d 558 (1991); Woods v. Woods, 95 Ohio App. 3d 222, 642 N.E.2d 45 (3d Dist. Hancock County 1994); Ragsdale v. Cherokee Nation Election Com'n, 1 Am. Tribal Law 42, 6 Okla. Trib. 591, 1998 WL 34067272 (N.A. 1998); Hardy v. State, 102 S.W.3d 123 (Tex. 2003).  
Under the accepted view, "cash" means ready money or money in hand Matter of Central R. Co. of New Jersey, 45 B.R. 1011 (D.N.J. 1985).
- 3 In re Feist's Will, 170 Misc. 497, 10 N.Y.S.2d 506 (Sur. Ct. 1939).
- 4 Matter of Central R. Co. of New Jersey, 45 B.R. 1011 (D.N.J. 1985).
- 5 In re Manning, 280 B.R. 171 (Bankr. S.D. Ohio 2002); Scott v. Wallace, 686 So. 2d 1241 (Ala. Civ. App. 1996); Woods v. Woods, 95 Ohio App. 3d 222, 642 N.E.2d 45 (3d Dist. Hancock County 1994); Ragsdale v. Cherokee Nation Election Com'n, 1 Am. Tribal Law 42, 6 Okla. Trib. 591, 1998 WL 34067272 (N.A. 1998).  
Cash includes currency of the United States at face value. In re Hirsch, 338 B.R. 193 (Bankr. W.D. N.Y. 2006) (by statute).
- 6 Matter of Central R. Co. of New Jersey, 45 B.R. 1011 (D.N.J. 1985).
- 7 In re Hirsch, 338 B.R. 193 (Bankr. W.D. N.Y. 2006) (by statute).
- 8 In re Hirsch, 338 B.R. 193 (Bankr. W.D. N.Y. 2006) (by statute).
- 9 In re Manning, 280 B.R. 171 (Bankr. S.D. Ohio 2002); Scott v. Wallace, 686 So. 2d 1241 (Ala. Civ. App. 1996); Woods v. Woods, 95 Ohio App. 3d 222, 642 N.E.2d 45 (3d Dist. Hancock County 1994); Ragsdale v. Cherokee Nation Election Com'n, 1 Am. Tribal Law 42, 6 Okla. Trib. 591, 1998 WL 34067272 (N.A. 1998).

- 10 [In re Hirsch](#), 338 B.R. 193 (Bankr. W.D. N.Y. 2006) (by statute).
- 11 [In re Manning](#), 280 B.R. 171 (Bankr. S.D. Ohio 2002); [Scott v. Wallace](#), 686 So. 2d 1241 (Ala. Civ. App. 1996); [Woods v. Woods](#), 95 Ohio App. 3d 222, 642 N.E.2d 45 (3d Dist. Hancock County 1994); [Ragsdale v. Cherokee Nation Election Com'n](#), 1 Am. Tribal Law 42, 6 Okla. Trib. 591, 1998 WL 34067272 (N.A. 1998). "Cash" includes checks paid and received as money. [Matter of Central R. Co. of New Jersey](#), 45 B.R. 1011 (D.N.J. 1985).
- 12 As to the status of checks as money, see § 9.
- 13 [Streiff Jewelry Co., Inc. v. United Parcel Service](#), 691 F. Supp. 1403 (S.D. Fla. 1988).
- 14 [In re Manning](#), 280 B.R. 171 (Bankr. S.D. Ohio 2002).
- 12 U.S.C.A. § 4001(4).
- As to the Expedited Funds Availability Act, see [Am. Jur. 2d, Banks and Financial Institutions § 775](#).
- 15 [Connell v. Sun Oil Co.](#), 42 Colo. App. 311, 596 P.2d 1215 (App. 1979).
- 16 [Connell v. Sun Oil Co.](#), 42 Colo. App. 311, 596 P.2d 1215 (App. 1979); [United Parcel Service, Inc. v. Universal Diamond Corp., Inc.](#), 200 Ga. App. 794, 409 S.E.2d 558 (1991).
- The term "cash" has been defined narrowly as currency, coin, or paper money. [In re Manning](#), 280 B.R. 171 (Bankr. S.D. Ohio 2002).
- 17 [Connell v. Sun Oil Co.](#), 42 Colo. App. 311, 596 P.2d 1215 (App. 1979).
- 18 [In re Manning](#), 280 B.R. 171 (Bankr. S.D. Ohio 2002) (referring to bank deposits, checks, drafts, notes, and bearer bonds).
- 19 [Connell v. Sun Oil Co.](#), 42 Colo. App. 311, 596 P.2d 1215 (App. 1979).

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## 53A Am. Jur. 2d Money § 4

American Jurisprudence, Second Edition | May 2021 Update

### Money

Eleanor L. Grossman, J.D. and Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.

### I. What Constitutes Money and Legal Tender

#### A. Definitions

## § 4. Coin

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1, 2

West's Key Number Digest, [Payment](#)  12(.5) to 12(5)

"Coin" means pieces of metal of definite weight and value, stamped by the authority of the government.<sup>1</sup> A coin is usually a circular disc<sup>2</sup> and distinguished from paper money, bills, notes, and other forms of government indebtedness or legal tender.<sup>3</sup> "Coin" and "money" are not synonymous; money includes coin but is not confined to it.<sup>4</sup>

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### Footnotes

- 1 [Cotlar v. Gulf Ins. Co.](#), 318 So. 2d 923 (La. Ct. App. 4th Cir. 1975); [In re Public Service Com'n's Determination Regarding Coin-Operated Telephones, Direct-Inward Dialing, and Touchtone Service](#), No. 2, 204 Mich. App. 350, 514 N.W.2d 775 (1994).
- 2 [Cotlar v. Gulf Ins. Co.](#), 318 So. 2d 923 (La. Ct. App. 4th Cir. 1975).
- 3 [In re Public Service Com'n's Determination Regarding Coin-Operated Telephones, Direct-Inward Dialing, and Touchtone Service](#), No. 2, 204 Mich. App. 350, 514 N.W.2d 775 (1994).
- 4 [In re Public Service Com'n's Determination Regarding Coin-Operated Telephones, Direct-Inward Dialing, and Touchtone Service](#), No. 2, 204 Mich. App. 350, 514 N.W.2d 775 (1994).

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## 53A Am. Jur. 2d Money § 5

American Jurisprudence, Second Edition | May 2021 Update

### Money

Eleanor L. Grossman, J.D. and Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.

### I. What Constitutes Money and Legal Tender

#### A. Definitions

## § 5. Currency

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1, 2

West's Key Number Digest, [Payment](#)  12(.5) to 12(5)

### Forms

Forms regarding medium of payment—currency or check, see Am. Jur. Legal Forms 2d, Payment [\[Westlaw®\(r\) Search Query\]](#)

"Currency" means coined money and such paper money as are authorized by law<sup>1</sup> and circulate as the medium of exchange.<sup>2</sup>

### Observation:

For purposes of federal regulations governing the reporting of currency transactions, "currency" is defined as the coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.<sup>3</sup>

Currency includes bank bills<sup>4</sup> or banknotes,<sup>5</sup> or at least such banknotes as pass freely in commercial transactions as money and are regarded nearly equivalent to coin.<sup>6</sup> However, money that is privately withdrawn from circulation and sold or traded as a collector's item at prices substantially above its value as fixed by Congress is not regarded as currency.<sup>7</sup> Furthermore, bullion is not legal currency because it has not been minted or otherwise legitimately issued by a government.<sup>8</sup>

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Footnotes

- 1                     In re Thompson Boat Co., 230 B.R. 815, 38 U.C.C. Rep. Serv. 2d 575 (Bankr. E.D. Mich. 1995); State v. Haas, 433 So. 2d 1343 (Fla. 5th DCA 1983).  
Currency includes paper and metallic money in circulation. State v. Stamey, 211 Ga. App. 837, 440 S.E.2d 725 (1994) (overruled on other grounds by, State v. Forthe, 237 Ga. App. 134, 514 S.E.2d 890 (1999)); Copous v. State, 1994 WL 149625 (Tex. App. Houston 14th Dist. 1994).  
Currency may be composed of either coin or paper or both. People v. O'Campo, 330 Ill. App. 401, 71 N.E.2d 375 (1st Dist. 1947).
- 2                     AMP Inc. and Consol. Subsidiaries v. U.S., 185 F.3d 1333 (Fed. Cir. 1999); In re Thompson Boat Co., 230 B.R. 815, 38 U.C.C. Rep. Serv. 2d 575 (Bankr. E.D. Mich. 1995); U.S. v. Lewis, 2001 WL 629692 (A.F.C.C.A. 2001); State v. Haas, 433 So. 2d 1343 (Fla. 5th DCA 1983); Copous v. State, 1994 WL 149625 (Tex. App. Houston 14th Dist. 1994).
- 3                     31 C.F.R. § 1010.100(m).  
As to federal reporting requirements regarding currency transactions, see §§ 67 to 71.
- 4                     Reese v. First Nat. Bank of Bellville, 196 S.W.2d 48, 171 A.L.R. 516 (Tex. Civ. App. Galveston 1946), writ refused n.r.e.
- 5                     U.S. v. Lewis, 2001 WL 629692 (A.F.C.C.A. 2001); State v. Haas, 433 So. 2d 1343 (Fla. 5th DCA 1983).
- 6                     People v. O'Campo, 330 Ill. App. 401, 71 N.E.2d 375 (1st Dist. 1947).
- 7                     Losana Corp. v. Porterfield, 14 Ohio St. 2d 42, 43 Ohio Op. 2d 112, 236 N.E.2d 535 (1968).
- 8                     Sanders v. Freeman, 221 F.3d 846, 2000 FED App. 0237P (6th Cir. 2000).

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## 53A Am. Jur. 2d Money § 6

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### Money

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### I. What Constitutes Money and Legal Tender

#### A. Definitions

## § 6. Virtual currency

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1, 2

West's Key Number Digest, [Payment](#)  12(.5)

#### A.L.R. Library

[Construction and Application of 18 U.S.C.A. §1960, Criminalizing Unlicensed Money Transmitting Business, Including Bitcoin](#), 13 A.L.R. Fed. 3d Art. 5

#### Law Reviews and Other Periodicals

Brito, [Bitcoin Financial Regulation: Securities, Derivatives, Prediction Markets, and Gambling](#), 16 Colum. Sci. & Tech. L. Rev. 144 (Fall 2014)

Middlebrook and Hughes, [Regulating Cryptocurrencies in the United States: Current Issues and Future Directions](#), 40 Wm. Mitchell L. Rev. 813 (2014)

Virtual currency may be used to pay for goods or services, or held for investment. Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value. In some environments, it operates like real currency, i.e., the coin and paper money of the United States or of any other country that is designated as legal tender,

circulates, and is customarily used and accepted as a medium of exchange in the country of issuance, but it does not have legal tender status in any jurisdiction.<sup>1</sup> Virtual currency that has an equivalent value in real currency, or that acts as a substitute for real currency, is referred to as convertible virtual currency. Bitcoin is one example of a convertible virtual currency.<sup>2</sup>

Bitcoin is an electronic form of currency unbacked by any real assets and without specie, such as coin or precious metal.<sup>3</sup> It is a virtual currency that exists solely in electronic form. A program running on the Internet processes and logs every Bitcoin transaction in a public ledger. The Bitcoin system functions in a distributed matter. No legal entity controls or administers Bitcoin. Additionally, no sovereign or commodity backs the currency. Thus, the value of a Bitcoin is determined only by public perception, trust, and adoption, causing great volatility.<sup>4</sup> Bitcoin is a decentralized digital currency that may be used to purchase goods and services online, or traded on online exchanges for conventional currencies, including the U.S. dollar.<sup>5</sup> It has been said that Bitcoin seems to be money. It can be used to buy and sell goods and services, or as a unit of account. It can be converted to fiat currency, including United States dollars. However, if Bitcoin falls under the economic definition of money, it does not qualify as a currency, electronic money, or payment instrument from a legal perspective. As Bitcoin lacks the requirements of "legal tender" in all jurisdictions, it cannot qualify as a currency.<sup>6</sup>

Bitcoin presents many regulatory and legal issues. Most importantly, many countries are having difficulty defining Bitcoin's nature, whether it is currency, commodity, security, payment system, or something else.<sup>7</sup> The United States Federal Crimes Enforcement Network (FinCEN) described virtual currencies and Bitcoin as a medium of exchange that operates like currency in some environments but does not have all the attributes of real currency. It contrasted Bitcoin to real currency and stated that Bitcoin/virtual currencies either have equivalent value in real currency or act as substitutes for real currency.<sup>8</sup> The Internal Revenue Service (IRS) has declared virtual currency property for federal tax purposes.<sup>9</sup>

Although it has been argued that virtual currency is property and not currency,<sup>10</sup> it has been held Bitcoin qualifies as "money" or "funds" under the statute criminalizing an unlicensed money transmitting business<sup>11</sup> and under the money laundering statute.<sup>12</sup> One court stated that it is clear that Bitcoins are funds within the plain meaning of that term. Bitcoins can be accepted as a payment for goods and services or bought directly from an exchange with a bank account. They therefore function as pecuniary resources and are used as a medium of exchange and a means of payment.<sup>13</sup> Bitcoins clearly qualify as money or funds because they can be easily purchased in exchange for ordinary currency, act as a denominator of value, and are used to conduct financial transactions.<sup>14</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Virtual currency bitcoin qualified as money under the District of Columbia's Money Transmitters Act (MTA), which criminalized engaging in money transmission without a license; ordinary definition of money, i.e., a medium of exchange, encompassed bitcoin, which was a medium of exchange, a method of payment, and a store of value, the MTA adopted the ordinary definition of money, rather than the specialized meaning provided by the Uniform Commercial Code (UCC), and other virtual currency companies' practice of obtaining money transmitter licenses from District's Department of Insurance, Currency, and Banking (DISB) supported conclusion that MTA reached virtual currency. [D.C. Code §§ 26-1001\(10\), 26-1023\(c\), 28:1-201\(b\)\(24\)](#). [United States v. Harmon](#), 474 F. Supp. 3d 76, 102 U.C.C. Rep. Serv. 2d 627 (D.D.C. 2020).

[END OF SUPPLEMENT]

Footnotes

- 1 I.R.S. Notice 2014-21, 2014-16 I.R.B. 938, 2014 WL 1224474.  
As to legal tender, generally, see § 11.
- 2 I.R.S. Notice 2014-21, 2014-16 I.R.B. 938, 2014 WL 1224474.
- 3 Securities and Exchange Commission v. Shavers, Fed. Sec. L. Rep. (CCH) P 97596, 2013 WL 4028182 (E.D. Tex. 2013).
- 4 Ly, Coining Bitcoin's "Legal-bits": Examining the Regulatory Framework for Bitcoin and Virtual Currencies, 27 Harv. J.L. & Tech. 587 (Spring 2014).
- 5 Securities and Exchange Commission v. Shavers, Fed. Sec. L. Rep. (CCH) P 98196, 2014 WL 4652121 (E.D. Tex. 2014) (further holding that investments in a Bitcoin savings and trust were investment contracts and notes, and thus, are securities).
- 6 Mandjee, Bitcoin, Its Legal Classification and Its Regulatory Framework, 15 J. Bus. & Sec. L. 157 (Spring 2015).
- 7 Litwack, Bitcoin: Currency of Fool's Gold?: A Comparative Analysis of the Legal Classifications of Bitcoin, 29 Temp. Int'l & Comp. L.J. 309 (Fall 2015).
- 8 Guidance (FIN-2013-G001) - Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies, FINCEN (Mar. 18. 2013), [http://www/fincen.gov/statutes\\_regs/guidance/html/FIN-2013-G001.html](http://www/fincen.gov/statutes_regs/guidance/html/FIN-2013-G001.html).
- 9 I.R.S. Notice 2014-21, 2014-16 I.R.B. 938, 2014 WL 1224474.
- 10 U.S. v. Ulbricht, 31 F. Supp. 3d 540 (S.D. N.Y. 2014).
- 11 United States v. 50.44 Bitcoins, 2016 WL 3049166 (D. Md. 2016); United States v. Murgio, 2016 WL 5107128 (S.D. N.Y. 2016); U.S. v. Budovsky, 2015 WL 5602853 (S.D. N.Y. 2015); U.S. v. Faiella, 39 F. Supp. 3d 544 (S.D. N.Y. 2014).
- 12 § 60.
- 13 United States v. Murgio, 2016 WL 5107128 (S.D. N.Y. 2016).
- 14 U.S. v. Faiella, 39 F. Supp. 3d 544 (S.D. N.Y. 2014).

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## 53A Am. Jur. 2d Money § 7

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### Money

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### I. What Constitutes Money and Legal Tender

#### A. Definitions

## § 7. Dollar

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  12(.5) to 12(5)

United States money is expressed in dollars.<sup>1</sup> In the United States, the word "dollar" means a certain amount of money<sup>2</sup> or what is regarded as money.<sup>3</sup>

As legal tender, a dollar is a dollar, regardless of the physical embodiment of the currency. Thus, the legal monetary value of a \$50 American Gold Eagle coin is equivalent to that of a \$50 Federal Reserve note.<sup>4</sup>

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### Footnotes

- 1                    § 31.  
The dollar was long ago established as the monetary standard of the currency of the United States. [Barclay v. Ochiltree Appraisal Dist. Bd.](#), 730 S.W.2d 878 (Tex. App. Amarillo 1987).  
As to the denominations of United States money, see § 31.
- 2                    [People v. Alba](#), 46 Cal. App. 2d 859, 117 P.2d 63 (3d Dist. 1941); [State v. Mishler](#), 81 Or. 548, 160 P. 382 (1916); [State v. Ryan](#), 34 Wash. 597, 76 P. 90 (1904); [State v. Robison](#), 109 W. Va. 561, 155 S.E. 649 (1930).
- 3                    [State v. Robison](#), 109 W. Va. 561, 155 S.E. 649 (1930).
- 4                    [Crummey v. Klein Independent School Dist.](#), 295 Fed. Appx. 625 (5th Cir. 2008).

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### Money

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#### I. What Constitutes Money and Legal Tender

#### B. Particular Things as Money

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, Banks and Banking 🔑 188

West's Key Number Digest, [Currency Regulation](#) 🔑 1, 3

West's Key Number Digest, [Payment](#) 🔑 10 to 12(3)

### A.L.R. Library

A.L.R. Index, Comptroller of Currency

A.L.R. Index, Federal Reserve Board and System

A.L.R. Index, Money or Cash

West's A.L.R. Digest, Banks and Banking 🔑 188

West's A.L.R. Digest, [Currency Regulation](#) 🔑 1, 3

West's A.L.R. Digest, [Payment](#) 🔑 10 to 12(3)

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## 53A Am. Jur. 2d Money § 8

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### Money

Eleanor L. Grossman, J.D. and Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.

#### I. What Constitutes Money and Legal Tender

#### B. Particular Things as Money

## § 8. Federal Reserve notes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, Banks and Banking  188

West's Key Number Digest, [Currency Regulation](#)  3

West's Key Number Digest, [Payment](#)  10, 12(.5) to 12(3)

Federal Reserve notes constitute lawful money.<sup>1</sup> Congress has exercised its constitutional power to coin money<sup>2</sup> by means of delegation to the Federal Reserve System.<sup>3</sup> Consequently, Federal Reserve notes are part of the federal system of fiat currency.<sup>4</sup>

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### Footnotes

- <sup>1</sup> [Edgar v. Inland Steel Co.](#), 744 F.2d 1276 (7th Cir. 1984) (rejecting the argument that Federal Reserve notes are not money); [In re Thompson Boat Co.](#), 230 B.R. 815, 38 U.C.C. Rep. Serv. 2d 575 (Bankr. E.D. Mich. 1995) (holding that Federal Reserve notes are a form of money); [Herald v. State](#), 107 Idaho 640, 691 P.2d 1255 (Ct. App. 1984).  
As to Federal Reserve notes as cash, see [§ 3](#).  
As to Federal Reserve notes as legal tender, see [§ 13](#).
- <sup>2</sup> [§ 25](#).
- <sup>3</sup> [Rothacker v. Rockwall County Cent. Appraisal Dist.](#), 703 S.W.2d 235 (Tex. App. Dallas 1985), writ refused n.r.e., (Mar. 12, 1986).
- <sup>4</sup> [Rothacker v. Rockwall County Cent. Appraisal Dist.](#), 703 S.W.2d 235 (Tex. App. Dallas 1985), writ refused n.r.e., (Mar. 12, 1986).

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## 53A Am. Jur. 2d Money § 9

American Jurisprudence, Second Edition | May 2021 Update

### Money

Eleanor L. Grossman, J.D. and Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.

#### I. What Constitutes Money and Legal Tender

#### B. Particular Things as Money

## § 9. Checks and credit cards

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  12(.5)

### A.L.R. Library

[Right of judgment creditor to demand that debtor's tender of payment be in cash or by certified check rather than by uncertified check, 82 A.L.R.3d 1199](#)

### Forms

Forms regarding medium of payment—check or credit card, see Am. Jur. Legal Forms 2d, Payment [\[Westlaw®\(r\) Search Query\]](#)

Under some authority, checks and credit cards are not money but rather are characterized as promises to pay in lawful money.<sup>1</sup> Since a check can be exchanged for Federal Reserve notes, which are legal tender, it represents a promise to pay the face amount of the check in legal tender.<sup>2</sup> While checks are not legal tender in themselves, and cannot lawfully be made such by state or municipality fiat, they may, however, be used as a substitute for legal tender because the payee ultimately has the right to present the check to a bank and redeem it for cash in the form of United States currency.<sup>3</sup>

Other authority holds that checks meet the definition of money.<sup>4</sup> In addition, negotiable checks and certified checks have been held to be cash.<sup>5</sup>

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Footnotes

- 1 [Cade v. Montgomery County](#), 83 Md. App. 419, 575 A.2d 744 (1990).  
A check is not money but only a token representing money. [Griffen v. Train](#), 40 Misc. 290, 81 N.Y.S. 977 (Sup 1903), *aff'd*, 90 A.D. 16, 85 N.Y.S. 686 (1st Dep't 1904).
- 2 [Nixon v. Individual Head of St. Joseph Mortg. Co.](#), 615 F. Supp. 898 (N.D. Ind. 1985), *judgment aff'd*, 792 F.2d 142 (7th Cir. 1986).
- 3 [Genesee Scrap & Tin Baling Co., Inc. v. City of Rochester](#), 558 F. Supp. 2d 432 (W.D. N.Y. 2008).  
As to legal tender, generally, see § 11.
- 4 [In re Forfeiture of \\$111,144](#), 191 Mich. App. 524, 478 N.W.2d 718 (1991).
- 5 § 3.

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## 53A Am. Jur. 2d Money § 10

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### Money

Eleanor L. Grossman, J.D. and Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.

#### I. What Constitutes Money and Legal Tender


#### B. Particular Things as Money


## § 10. Banknotes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, Banks and Banking  188

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(3)

Banknotes are promissory notes of a bank to pay the bearer a sum certain upon demand.<sup>1</sup> It has been held that banknotes are not classed as money.<sup>2</sup> Other authority, however, states that banknotes are intended to circulate as money<sup>3</sup> and includes circulating notes of national banking associations within the definition of "money."<sup>4</sup>

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### Footnotes

- 1 [People v. Paulus](#), 121 Mich. App. 445, 328 N.W.2d 659 (1982); [Crunk v. State Farm Fire and Cas. Co.](#), 38 Wash. App. 501, 686 P.2d 1132 (Div. 1 1984), decision rev'd on other grounds, 106 Wash. 2d 23, 719 P.2d 1338, 1 U.C.C. Rep. Serv. 2d 1283 (1986).
- 2 [Hamilton v. State](#), 60 Ind. 193, 1877 WL 6687 (1877).
- 3 [People v. Paulus](#), 121 Mich. App. 445, 328 N.W.2d 659 (1982); [Crunk v. State Farm Fire and Cas. Co.](#), 38 Wash. App. 501, 686 P.2d 1132 (Div. 1 1984), decision rev'd on other grounds, 106 Wash. 2d 23, 719 P.2d 1338, 1 U.C.C. Rep. Serv. 2d 1283 (1986).
- 4 [Mentor v. Battersby](#), 2005-Ohio-3387, 2005 WL 1538241 (Ohio Ct. App. 11th Dist. Lake County 2005).

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## 53A Am. Jur. 2d Money I C Refs.

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### Money

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### I. What Constitutes Money and Legal Tender

#### C. Legal Tender

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, Banks and Banking 🔑 188, 188.5

West's Key Number Digest, [Currency Regulation](#) 🔑 1, 3

West's Key Number Digest, [Payment](#) 🔑 10 to 12(5)

### A.L.R. Library

A.L.R. Index, Comptroller of Currency

A.L.R. Index, Federal Reserve Board and System

A.L.R. Index, Money or Cash

West's A.L.R. Digest, Banks and Banking 🔑 188, 188.5

West's A.L.R. Digest, [Currency Regulation](#) 🔑 1, 3

West's A.L.R. Digest, [Payment](#) 🔑 10 to 12(5)

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## 53A Am. Jur. 2d Money § 11

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### Money

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### I. What Constitutes Money and Legal Tender

#### C. Legal Tender

## § 11. Legal tender, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10, 11

### Forms

Forms regarding medium of payment—currency or check, see Am. Jur. Legal Forms 2d, Payment [[Westlaw®\(r\) Search Query](#)]

"Legal tender" refers to the coin, paper money, or circulating medium that the law compels a creditor to accept in payment of a debt when tendered by the debtor.<sup>1</sup> A medium of exchange need not be legal tender to be classified as money.<sup>2</sup> Nonetheless, where an obligation is in general terms made payable in money, it is by implication payable in the legal tender of the country.<sup>3</sup>

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### Footnotes

- 1 [Seidman v. Insurance Com'r of Com.](#), 110 Pa. Commw. 401, 532 A.2d 917 (1987).
- 2 [State v. Finnegean](#), 127 Iowa 286, 103 N.W. 155 (1905); [Vick v. Howard](#), 136 Va. 101, 116 S.E. 465, 31 A.L.R. 240 (1923).  
As to the definition of "money," see § 1.
- 3 [Cohn v. Tucson Elec. Power Co.](#), 138 Ariz. 136, 673 P.2d 334 (Ct. App. Div. 2 1983).



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## 53A Am. Jur. 2d Money § 12

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### Money

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### I. What Constitutes Money and Legal Tender


#### C. Legal Tender

## § 12. Powers of Congress to determine legal tender

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10, 11

By virtue of its constitutional power to coin money,<sup>1</sup> Congress has the exclusive ability to determine what will be the legal tender throughout the United States.<sup>2</sup> The constitutional provision prohibiting states from making anything but gold and silver coin a tender in payment of debts<sup>3</sup> does not apply to the federal government.<sup>4</sup>

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### Footnotes

- <sup>1</sup> § 25.
- <sup>2</sup> [Nixon v. Phillipoff](#), 615 F. Supp. 890 (N.D. Ind. 1985), [aff'd](#), 787 F.2d 596 (7th Cir. 1986); [Chermack v. Bjornson](#), 302 Minn. 213, 223 N.W.2d 659 (1974); [First Nat. Bank of Black Hills v. Treadway](#), 339 N.W.2d 119 (S.D. 1983); [Rothacker v. Rockwall County Cent. Appraisal Dist.](#), 703 S.W.2d 235 (Tex. App. Dallas 1985), writ refused n.r.e., (Mar. 12, 1986); [Trohimovich v. Department of Labor and Industries](#), 73 Wash. App. 314, 869 P.2d 95 (Div. 2 1994).  
A court cannot declare what is legal tender; only Congress has that power. [U.S. v. Ware](#), 608 F.2d 400 (10th Cir. 1979).
- <sup>3</sup> U.S. Const. Art. I, § 10.
- <sup>4</sup> [Lowry v. State](#), 655 P.2d 780 (Alaska Ct. App. 1982); [Larned Production Credit Ass'n v. E & E Feeding](#), 8 Kan. App. 2d 263, 655 P.2d 138 (1982); [Allnutt v. State](#), 59 Md. App. 694, 478 A.2d 321 (1984); [Solyom v. Maryland-National Capital Park and Planning Com'n](#), 53 Md. App. 280, 452 A.2d 1283 (1982); [Chermack v. Bjornson](#), 302 Minn. 213, 223 N.W.2d 659 (1974); [City of Colton v. Corbly](#), 323 N.W.2d 138 (S.D. 1982); [Baird v. County Assessors of Salt Lake and Utah Counties](#), 779 P.2d 676 (Utah 1989).

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## 53A Am. Jur. 2d Money § 13

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### Money

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### I. What Constitutes Money and Legal Tender

#### C. Legal Tender

## § 13. Coins, currency, Federal Reserve notes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1, 3

West's Key Number Digest, [Payment](#)  10, 11

Congress has undertaken to establish a uniform currency and to make that currency legal tender for the payment of debts.<sup>1</sup> Congress has the constitutional power to make paper money—that is, the Treasury notes of the United States—the legal tender of the nation.<sup>2</sup> Thus, by federal statute, United States coins and currency, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banks, are legal tender for all debts, public charges, taxes, and dues.<sup>3</sup>

The federal legal-tender statute<sup>4</sup> cannot be interpreted to require acceptance of a particular denomination of currency, such as single dollar bills, as bus fare.<sup>5</sup> The absolute language of the legal-tender statute is clearly modifiable by the necessary consideration of what is reasonable under the circumstances.<sup>6</sup>

By requiring Chapter 13 debtors to make plan payments using only certified funds, automatic wage withdrawals, or electronic transfers, a bankruptcy judge did not violate the federal statute providing that "United States coins and currency are legal tender for all debts, public charges, taxes, and dues." In requiring only these forms of payment, the bankruptcy judge simply sought a way to ensure the efficient and reliable transfer of the required currency payments.<sup>7</sup>

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### Footnotes

- <sup>1</sup> [Norman v. Baltimore & O.R. Co.](#), 294 U.S. 240, 55 S. Ct. 407, 79 L. Ed. 885, 95 A.L.R. 1352 (1935). Congress is constitutionally authorized to issue currency as legal tender. [Beaner v. U.S.](#), 361 F. Supp. 2d 1063 (D.S.D. 2005).

As to Congress's constitutional power to determine legal tender, see § 12.

2       The Legal Tender Cases, 110 U.S. 421, 4 S. Ct. 122, 28 L. Ed. 204 (1884); *Radue v. Zanaty*, 293 Ala. 585, 308 So. 2d 242 (1975); *Larned Production Credit Ass'n v. E & E Feeding*, 8 Kan. App. 2d 263, 655 P.2d 138 (1982); *Allen v. Craig*, 1 Kan. App. 2d 301, 564 P.2d 552 (1977); *Brand v. State*, 828 S.W.2d 824 (Tex. App. Fort Worth 1992); *Baird v. County Assessors of Salt Lake and Utah Counties*, 779 P.2d 676 (Utah 1989).

Congress may make Treasury notes legal tender, whether that authority is exercised in the course of war or in times of peace. *Norman v. Baltimore & O.R. Co.*, 294 U.S. 240, 55 S. Ct. 407, 79 L. Ed. 885, 95 A.L.R. 1352 (1935).

3       31 U.S.C.A. §§ 5103, 5112(h).

Congress has the power under the United States Constitution to establish a national paper currency, has delegated that power to the Federal Reserve System, and has designated Federal Reserve notes as legal tender. *Brand v. State*, 828 S.W.2d 824 (Tex. App. Fort Worth 1992).

4       31 U.S.C.A. § 5103.

5       *Nemser v. New York City Transit Authority*, 140 Misc. 2d 369, 530 N.Y.S.2d 493 (Sup 1988).

6       *Nemser v. New York City Transit Authority*, 140 Misc. 2d 369, 530 N.Y.S.2d 493 (Sup 1988).

7       *In re Reyes*, 482 B.R. 603 (D. Ariz. 2012).

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## 53A Am. Jur. 2d Money § 14

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### Money

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### I. What Constitutes Money and Legal Tender

#### C. Legal Tender

## § 14. Powers denied to states regarding legal tender

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10, 11

### A.L.R. Library

[Propriety of accepting check or promissory note in satisfaction of bid at execution or judicial sale had for cash](#), 86 A.L.R.2d 292

The constitutional provision prohibiting states from making anything but gold and silver coin a tender in payment of debts<sup>1</sup> is not a directive to the states to deal only in gold or silver coin.<sup>2</sup> To the contrary, the states, which must abide by the dictates of Congress, are constitutionally compelled to accept Federal Reserve notes as legal tender.<sup>3</sup> The Constitution does not require that debts owed to the state, such as taxes and fines, be paid in gold or silver, or in currency that is redeemable for gold or silver.<sup>4</sup> By requiring that payments to the state be made in lawful money of the United States, a state does not create a new form of legal tender but simply acknowledges the existing forms of tender established by Congress.<sup>5</sup>

### Observation:

Interpreting the Constitution to require states to recognize only gold and silver coin as legal tender would infringe upon Congress's power to declare what shall constitute legal tender for payment of all debts.<sup>6</sup>

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#### Footnotes

- 1 § 12.
- 2 *Spurgeon v. Franchise Tax Board*, 160 Cal. App. 3d 524, 206 Cal. Rptr. 636 (3d Dist. 1984); *Richardson v. Richardson*, 122 Mich. App. 531, 332 N.W.2d 524 (1983); *Baird v. County Assessors of Salt Lake and Utah Counties*, 779 P.2d 676 (Utah 1989).
- 3 *Nixon v. Phillipoff*, 615 F. Supp. 890 (N.D. Ind. 1985), *aff'd*, 787 F.2d 596 (7th Cir. 1986); *Richardson v. Richardson*, 122 Mich. App. 531, 332 N.W.2d 524 (1983).  
As to Federal Reserve notes as legal tender, see § 13.
- 4 *U.S. v. Wangrud*, 533 F.2d 495 (9th Cir. 1976); *Cohn v. Tucson Elec. Power Co.*, 138 Ariz. 136, 673 P.2d 334 (Ct. App. Div. 2 1983); *People v. Lawrence*, 124 Mich. App. 230, 333 N.W.2d 525 (1983); *Richardson v. Richardson*, 122 Mich. App. 531, 332 N.W.2d 524 (1983); *State v. Gasser*, 306 N.W.2d 205 (N.D. 1981); *Com. v. Venen*, 288 Pa. Super. 143, 431 A.2d 329 (1981); *Wikle v. City of Rapid City*, 347 N.W.2d 584 (S.D. 1984); *Rothacker v. Rockwall County Cent. Appraisal Dist.*, 703 S.W.2d 235 (Tex. App. Dallas 1985), *writ refused n.r.e.*, (Mar. 12, 1986).  
As to agreements to pay in gold, generally, see §§ 50 to 54.
- 5 *Herald v. State*, 107 Idaho 640, 691 P.2d 1255 (Ct. App. 1984); *Seidman v. Insurance Com'r of Com.*, 110 Pa. Commw. 401, 532 A.2d 917 (1987).
- 6 *Nixon v. Phillipoff*, 615 F. Supp. 890 (N.D. Ind. 1985), *aff'd*, 787 F.2d 596 (7th Cir. 1986).

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## 53A Am. Jur. 2d Money § 15

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### Money

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### I. What Constitutes Money and Legal Tender


#### C. Legal Tender


## § 15. Foreign money as legal tender

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, Banks and Banking  188, 188.5

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10, 11, 12(5)

### A.L.R. Library

[Construction and Application by U.S. Supreme Court of Necessary and Proper Clause of U.S. Constitution—U.S. Const. Art. I, s8, cl. 18, 65 A.L.R. Fed. 2d 161](#)

Under its constitutional power to provide a currency for the entire country,<sup>1</sup> Congress may restrain by suitable enactments circulation as money of any notes not issued under its own authority.<sup>2</sup> Pursuant to this power, Congress has declared that foreign gold or silver coins are not legal tender for debts.<sup>3</sup> However, American courts can and should enter judgments in foreign currencies in appropriate cases.<sup>4</sup> Furthermore, a federal agency may use the coins and currencies of a foreign country for a specific program or activity.<sup>5</sup>

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### Footnotes

<sup>1</sup> [U.S. Const. Art. I, § 8, cl. 18.](#)

<sup>2</sup> [The Legal Tender Cases, 110 U.S. 421, 4 S. Ct. 122, 28 L. Ed. 204 \(1884\).](#)



- 3                    31 U.S.C.A. § 5103.  
As to the status of foreign money in the United States, generally, see §§ 75, 76.
- 4                    *Mitsui & Co., Ltd. v. Oceantrawl Corp.*, 906 F. Supp. 202 (S.D. N.Y. 1995) (noting the repeal of contrary  
Coinage Act provision).
- 5                    As to judgments in foreign currency and the exchange rates used in conversion of judgments, see §§ 78 to 85.  
31 U.S.C.A. § 5303.

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## 53A Am. Jur. 2d Money § 16

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### I. What Constitutes Money and Legal Tender

#### C. Legal Tender

## § 16. Worn, mutilated, or defaced money as legal tender

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10, 11

A genuine coin of the United States that has its mint marks plainly discernible and that is not appreciably diminished in weight is legal tender for its original amount.<sup>1</sup> The law does not require that minor coins, tendered in payment of a debt, must be perfect in quality.<sup>2</sup>

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### Footnotes

<sup>1</sup> [North Hudson County Ry. Co. v. Anderson](#), 61 N.J.L. 248, 39 A. 905 (N.J. Ct. Err. & App. 1898); [Cincinnati Northern Traction Co. v. Rosnagle](#), 84 Ohio St. 310, 95 N.E. 884 (1911).

<sup>2</sup> [Cincinnati Northern Traction Co. v. Rosnagle](#), 84 Ohio St. 310, 95 N.E. 884 (1911).

As to the redemption of United States currency, generally, see [§ 39](#).

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## 53A Am. Jur. 2d Money II A Refs.

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### Money

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### II. Nature and Incidents of Money

#### A. In General


[Topic Summary](#) | [Correlation Table](#)


## Research References

### West's Key Number Digest

West's Key Number Digest, Banks and Banking  188, 188.5

West's Key Number Digest, [Conversion and Civil Theft](#)  106

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)


### A.L.R. Library

A.L.R. Index, Coin Collections

A.L.R. Index, Comptroller of Currency

A.L.R. Index, Federal Reserve Board and System

A.L.R. Index, Money or Cash

West's A.L.R. Digest, Banks and Banking  188, 188.5

West's A.L.R. Digest, Conversion and Civil Theft  106

West's A.L.R. Digest, Currency Regulation  1

West's A.L.R. Digest, [Payment](#)  10 to 12(5)

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## 53A Am. Jur. 2d Money § 17

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### II. Nature and Incidents of Money


#### A. In General


## § 17. Standard of value

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, Banks and Banking  188, 188.5

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

A country's unit of money serves as the standard unit of value in that country.<sup>1</sup> The power to establish a standard of value by which all other values may be measured is by its nature, and of necessity, a governmental power.<sup>2</sup>

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### Footnotes

<sup>1</sup> [Nortz v. U.S.](#), 294 U.S. 317, 55 S. Ct. 428, 79 L. Ed. 907, 95 A.L.R. 1346 (1935); [Birkenstock v. C. I. R.](#), 646 F.2d 1185 (7th Cir. 1981).

As to the dollar as the monetary standard of the currency of the United States, see [§ 7](#).

<sup>2</sup> [Hepburn v. Griswold](#), 75 U.S. 603, 19 L. Ed. 513, 1869 WL 11611 (1869) (overruled in part on other grounds by, [Legal Tender Cases](#), 79 U.S. 457, 20 L. Ed. 287, 1870 WL 12742 (1870)).

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## 53A Am. Jur. 2d Money § 18

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### II. Nature and Incidents of Money


#### A. In General

## § 18. Money as property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

Money in any form is generally regarded and treated as personal property.<sup>1</sup> As a general proposition, the law presumes that ownership lies with the person in possession of money, and whether this presumption holds depends, in part, on the nature of the transaction that led to possession.<sup>2</sup>

### Practice Tip:

Since United States currency is normally considered to be a bearer instrument, possession of such property is prima facie evidence of ownership.<sup>3</sup> The burden of producing evidence regarding ownership rests upon the person disputing ownership.<sup>4</sup>

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### Footnotes

<sup>1</sup> [Pirie v. Chicago Title & Trust Co.](#), 182 U.S. 438, 21 S. Ct. 906, 45 L. Ed. 1171 (1901); [City of Atlanta v. Hotels.com, L.P.](#), 332 Ga. App. 888, 775 S.E.2d 276 (2015), cert. denied, (Oct. 5, 2015); [Gold Trading](#)

Stamp Co. v. Commonwealth, 224 Ky. 136, 5 S.W.2d 910 (1928); First Priority Bank v. Moon, 2014 OK CIV APP 21, 326 P.3d 528 (Div. 1 2013), cert. denied, (Feb. 18, 2014); City of Portland v. Berry, 86 Or. App. 376, 739 P.2d 1041, 4 U.C.C. Rep. Serv. 2d 474 (1987).

2 In re Velazquez, 397 B.R. 231 (Bankr. D. P.R. 2008), subsequently aff'd, 625 F.3d 34 (1st Cir. 2010).

As to stolen money, see §§ 23, 24.

3 In re Forfeiture of \$19,250, 209 Mich. App. 20, 530 N.W.2d 759 (1995).

4 In re Forfeiture of \$19,250, 209 Mich. App. 20, 530 N.W.2d 759 (1995).

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### II. Nature and Incidents of Money


#### A. In General

## § 19. Fungibility of money

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

Money is in its nature severable; one coin or note has the same essential qualities and value possessed by any other of like denomination.<sup>1</sup> In other words, money is fungible<sup>2</sup> or interchangeable.<sup>3</sup>

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### Footnotes

- <sup>1</sup> State v. McFetridge, 84 Wis. 473, 54 N.W. 1 (1893).
- <sup>2</sup> Sabri v. U.S., 541 U.S. 600, 124 S. Ct. 1941, 158 L. Ed. 2d 891, 5 A.L.R. Fed. 2d 821 (2004); U.S. v. Caro-Muniz, 406 F.3d 22 (1st Cir. 2005); Savoie v. Merchants Bank, 84 F.3d 52 (2d Cir. 1996); U.S. v. Karam, 201 F.3d 320 (4th Cir. 2000); U.S. v. Lipscomb, 299 F.3d 303 (5th Cir. 2002); U.S. v. Spano, 401 F.3d 837 (7th Cir. 2005); Humanitarian Law Project v. Reno, 205 F.3d 1130 (9th Cir.2000); U.S. v. Whiteside, 285 F.3d 1345 (11th Cir. 2002) (referring to the logical notion that money is fungible); U.S. v. Philip Morris USA, Inc., 396 F.3d 1190 (D.C. Cir. 2005); U.S. Shoe Corp. v. U.S., 296 F.3d 1378 (Fed. Cir. 2002); Small Property Owners of San Francisco v. City and County of San Francisco, 141 Cal. App. 4th 1388, 47 Cal. Rptr. 3d 121 (1st Dist. 2006); Martin v. Martin, 787 So. 2d 951 (Fla. 2d DCA 2001); City of Atlanta v. Hotels.com, L.P., 332 Ga. App. 888, 775 S.E.2d 276 (2015), cert. denied, (Oct. 5, 2015); Maine Beer & Wine Wholesalers Ass'n v. State, 619 A.2d 94 (Me. 1993); Stevens v. Nagel, 64 Mass. App. Ct. 136, 831 N.E.2d 935 (2005); People v. \$176,598.00 U.S. Currency, 242 Mich. App. 342, 618 N.W.2d 922 (2000); State v. Field, 2005 MT 181, 328 Mont. 26, 116 P.3d 813 (2005) (recognizing rule); Brewer for Value-Added Communications, Inc. Litigation Trust v. State, 176 Misc. 2d 337, 672 N.Y.S.2d 650 (Ct. Cl. 1998); Knight v. Knight, 2000 WL 426167 (Ohio Ct. App. 4th Dist. Washington County 2000) (recognizing rule); Dudek v. Umatilla County, 187 Or. App. 504, 69 P.3d 751 (2003); In re Paxson Trust I, 2006 PA Super 9, 893 A.2d 99 (2006); Texas

[Boll Weevil Eradication Foundation, Inc. v. Lewellen](#), 952 S.W.2d 454 (Tex. 1997), as supplemented on denial of reh'g, (Oct. 9, 1997); [Dean v. Town of Addison](#), 207 W. Va. 538, 534 S.E.2d 403 (2000). Legally as well as economically, money is fungible. [Koslow v. Commonwealth of Pennsylvania](#), 302 F.3d 161 (3d Cir. 2002).  
3 [Matter of Sheridan](#), 57 F.3d 627 (7th Cir. 1995); [Taylor v. State](#), 827 A.2d 24 (Del. 2003).

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## 53A Am. Jur. 2d Money § 20

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### Money

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### II. Nature and Incidents of Money

#### A. In General


## § 20. Security interest in money as requiring possession

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, Banks and Banking  188, 188.5

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

Under the Uniform Commercial Code, a security interest in money can ordinarily be perfected only by the secured party's taking possession.<sup>1</sup> Because the perfection of a security interest in money depends upon possession by the secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.<sup>2</sup>

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### Footnotes

- <sup>1</sup> [Am. Jur. 2d, Secured Transactions § 370.](#)  
As to the U.C.C. definition of "money," see [§ 2](#).
- <sup>2</sup> [Am. Jur. 2d, Secured Transactions § 337.](#)

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## 53A Am. Jur. 2d Money § 21

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### Money

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### II. Nature and Incidents of Money

#### A. In General

## § 21. Conversion

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Conversion and Civil Theft](#)  106

West's Key Number Digest, [Currency Regulation](#)  1

### A.L.R. Library

[Nature of property or rights other than tangible chattels which may be subject of conversion, 44 A.L.R.2d 927](#)

### Forms

Forms regarding conversion of money, see Am. Jur. Pleading and Practice Forms, Conversion [[Westlaw®\(r\) Search Query](#)]

An action may lie for the conversion of money<sup>1</sup> where there is an obligation to keep intact or deliver the specific money in question<sup>2</sup> and where such money can be identified<sup>3</sup> or described.<sup>4</sup> The money must be specifically identifiable,<sup>5</sup> such as by segregation.<sup>6</sup> Some courts hold that the money must be earmarked,<sup>7</sup> that is, that the defendant had an obligation to deliver a specific corpus of money capable of identification and not merely that the defendant had an obligation to pay a certain sum as a general debt,<sup>8</sup> while other courts hold that it is not essential that the money be earmarked.<sup>9</sup>

**Practice Tip:**

When specific bills and coins are identifiable because of serial numbers or special markings or because they are located uncommingled at a specific, exclusive place or contained within an identifiable container, the bills and coins can be recovered.<sup>10</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Foreclosure investment firm that was high bidder at postpetition foreclosure sale of deed of trust property belonging to Chapter 7 debtor and her nondebtor husband that was conducted in violation of the automatic stay, whose tendered funds were misappropriated by attorney hired by deed of trust lender to conduct sale and were used by attorney, in part, to pay former clients from whom he had previously stolen, failed to demonstrate that former clients converted the funds under Texas law, absent any showing that the money in question was delivered to either client for safekeeping. [11 U.S.C.A. § 362\(a\). Matter of Okedokun, 968 F.3d 378 \(5th Cir. 2020\).](#)

Although money is generally not subject to conversion claims under Maryland law, an exception exists for discrete, identifiable sums that have been diverted from their proper destination. [Capital Finance, LLC v. Rosenberg, 364 F. Supp. 3d 529 \(D. Md. 2019\).](#)

Construction project owner could not maintain conversion claim against construction contractor, absent an identifiable fund subject to conversion and absent a demonstration that project owner had a right to the money in question other than under the contract. [Saks Management and Associates, LLC v. Sung General Contracting, Inc., 849 S.E.2d 19 \(Ga. Ct. App. 2020\).](#)

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [Adams, George, Lee, Schulte, & Ward, P. A. v. Westinghouse Elec. Corp., 597 F.2d 570 \(5th Cir. 1979\) \(applying Florida law\); Aliya Medicare Finance, LLC v. Nickell, 156 F. Supp. 3d 1105 \(C.D. Cal. 2015\) \(applying Nevada law\); Hanover Ins. Co. v. Hermosa Const. Group, LLC, 57 F. Supp. 3d 1389 \(N.D. Ga. 2014\); Zang v. Alliance Financial Services of Illinois, Ltd., 875 F. Supp. 2d 865 \(N.D. Ill. 2012\) \(applying Illinois law\); Pare v. Northborough Capital Partners, LLC, 133 F. Supp. 3d 334 \(D. Mass. 2015\); Toomey v. Dahl, 63 F. Supp. 3d 982 \(D. Minn. 2014\); Elsevier, Inc. v. Grossman, 77 F. Supp. 3d 331 \(S.D. N.Y. 2015\); Cobalt Multifamily Investors I, LLC v. Shapiro, 9 F. Supp. 3d 399 \(S.D. N.Y. 2014\), subsequent determination, 2014 WL 5343306 \(S.D. N.Y. 2014\) \(applying Connecticut law\); Broederdorf v. Bachelier, 129 F. Supp. 3d 182 \(E.D. Pa. 2015\); In re Schupbach, 500 B.R. 22 \(Bankr. D. Kan. 2013\); Qenkor Const., Inc. v. Everett, 333 Ga. App. 510, 773 S.E.2d 821 \(2015\), cert. denied, \(Nov. 2, 2015\).](#)

- 2 U. S. Fidelity and Guaranty Co. v. Bass, 619 F.2d 1057 (5th Cir. 1980) (applying Alabama law); IberiaBank v. Coconut 41, LLC, 984 F. Supp. 2d 1283 (M.D. Fla. 2013), *aff'd*, 589 Fed. Appx. 479 (11th Cir. 2014); CH Holding Co. v. Miller Parking Co., 534 B.R. 308 (E.D. Mich. 2015); Rogers v. Comcast Corp., 55 F. Supp. 3d 711 (E.D. Pa. 2014), appeal dismissed, (3rd Cir. 14-4520)(June 15, 2015) (applying Massachusetts law); Riscorp, Inc. v. Norman, 915 So. 2d 1142 (Ala. 2005).  
An action will lie for the conversion of money where there is an obligation to return or otherwise particularly treat specific money. *Seifts v. Consumer Health Solutions LLC*, 61 F. Supp. 3d 306 (S.D. N.Y. 2014); *Beardmore v. Jacobsen*, 131 F. Supp. 3d 656 (S.D. Tex. 2015); *Rhino Fund, LLLP v. Hutchins*, 215 P.3d 1186 (Colo. App. 2008), as modified on denial of reh'g, (Dec. 24, 2008); *East Schodack Fire Co., Inc. v. Milkewicz*, 140 A.D.3d 1255, 34 N.Y.S.3d 640 (3d Dep't 2016).
- 3 U. S. Fidelity and Guaranty Co. v. Bass, 619 F.2d 1057 (5th Cir. 1980) (applying Alabama law); CH Holding Co. v. Miller Parking Co., 534 B.R. 308 (E.D. Mich. 2015); *Wake County v. Hotels.com, L.P.*, 235 N.C. App. 633, 762 S.E.2d 477 (2014).  
Money is capable of identification, assuming identification is required for recovery on a conversion claim, where it is delivered at one time, by one act and in one mass, or where the deposit is special and the identical money is to be kept for the party making the deposit. *Amegy Bank Nat. Ass'n v. Deutsche Bank Corp.*, 917 F. Supp. 2d 1228 (M.D. Fla. 2013).
- 4 *Wake County v. Hotels.com, L.P.*, 235 N.C. App. 633, 762 S.E.2d 477 (2014); *Gronberg v. York*, 568 S.W.2d 139 (Tex. Civ. App. Tyler 1978), writ refused n.r.e., (Nov. 22, 1978).
- 5 *ESG Capital Partners, LP v. Stratos*, 828 F.3d 1023 (9th Cir. 2016) (applying California law); *Headfirst Baseball LLC v. Elwood*, 168 F. Supp. 3d 236, 94 Fed. R. Serv. 3d 213 (D.D.C. 2016); *Hobbs v. St. Martin*, 2016 WL 4039169 (D. Md. 2016); *Humana Inc. v. Medtronic Sofamor Danek USA, Inc.*, 133 F. Supp. 3d 1068 (W.D. Tenn. 2015); *In re Opus East, LLC*, 528 B.R. 30 (Bankr. D. Del. 2015), *aff'd*, 2016 WL 1298965 (D. Del. 2016); *Medical Recovery Services, LLC v. Bonneville Billing and Collections, Inc.*, 157 Idaho 395, 336 P.3d 802 (2014); *Simpson & Simpson, PLLC v. Lippes Mathias Wexler Friedman LLP*, 130 A.D.3d 1543, 14 N.Y.S.3d 258 (4th Dep't 2015).  
Money cannot be the subject of a cause of action for conversion unless there is a specific, identifiable sum involved, such as where an agent accepts a sum of money to be paid to another and fails to make the payment. *Florey Institute of Neuroscience and Mental Health v. Kleiner Perkins Caufield & Byers*, 31 F. Supp. 3d 1034 (N.D. Cal. 2014).
- 6 *Hobbs v. St. Martin*, 2016 WL 4039169 (D. Md. 2016); *Stallard v. Bank of America, N.A.*, 137 F. Supp. 3d 867 (E.D. Va. 2015) (applying Delaware law and Virginia law); *In re Laos*, 513 B.R. 119 (Bankr. D. Ariz. 2014); *In re Opus East, LLC*, 528 B.R. 30 (Bankr. D. Del. 2015), *aff'd*, 2016 WL 1298965 (D. Del. 2016); *Koss Corp. v. American Exp. Co.*, 233 Ariz. 74, 309 P.3d 898, 81 U.C.C. Rep. Serv. 2d 603 (Ct. App. Div. 1 2013).
- 7 *Baerg v. Ford*, 88 U.C.C. Rep. Serv. 2d 1227 (Ky. Ct. App. 2016); *RAE Assocs., Inc. v. Nexus Communications, Inc.*, 2015-Ohio-2166, 36 N.E.3d 757 (Ohio Ct. App. 10th Dist. Franklin County 2015).
- 8 *RAE Assocs., Inc. v. Nexus Communications, Inc.*, 2015-Ohio-2166, 36 N.E.3d 757 (Ohio Ct. App. 10th Dist. Franklin County 2015).
- 9 *In re Giddens*, 514 B.R. 542 (Bankr. N.D. Ill. 2014); *Welco Electronics, Inc. v. Mora*, 223 Cal. App. 4th 202, 166 Cal. Rptr. 3d 877 (2d Dist. 2014).
- 10 *Williams Management Enterprises, Inc. v. Buonauro*, 489 So. 2d 160 (Fla. 5th DCA 1986); *City of Portland v. Berry*, 86 Or. App. 376, 739 P.2d 1041, 4 U.C.C. Rep. Serv. 2d 474 (1987).

## 53A Am. Jur. 2d Money II B Refs.

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### Money

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### II. Nature and Incidents of Money


#### B. Title and Transfer

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  5

West's Key Number Digest, [Payment](#)  10 to 12(5)

West's Key Number Digest, [Sales](#)  2963

### A.L.R. Library

A.L.R. Index, Coin Collections

A.L.R. Index, Comptroller of Currency

A.L.R. Index, Federal Reserve Board and System

A.L.R. Index, Money or Cash

West's A.L.R. Digest, [Currency Regulation](#)  5

West's A.L.R. Digest, [Payment](#)  10 to 12(5)

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## 53A Am. Jur. 2d Money § 22

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### II. Nature and Incidents of Money


#### B. Title and Transfer

## § 22. Title to money

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  5

West's Key Number Digest, [Payment](#)  10 to 12(5)

Since possession of money vests title in the holder,<sup>1</sup> the title to money passes with delivery to a person who acquires it in good faith and for valuable consideration.<sup>2</sup>

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### Footnotes

- <sup>1</sup> As to possession as prima facie evidence of ownership, see [§ 18](#).
- <sup>2</sup> [Land Oberoesterreich v. Gude](#), 86 F.2d 621 (C.C.A. 2d Cir. 1936); [U.S. v. Barnard](#), 72 F. Supp. 531 (W.D. Tenn. 1947); [Hall v. Hall](#), 241 Ala. 397, 2 So. 2d 908 (1941); [City of Portland v. Berry](#), 86 Or. App. 376, 739 P.2d 1041, 4 U.C.C. Rep. Serv. 2d 474 (1987); [Sinclair Houston Federal Credit Union v. Hendricks](#), 268 S.W.2d 290, 44 A.L.R.2d 1234 (Tex. Civ. App. Galveston 1954), writ refused n.r.e.

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## 53A Am. Jur. 2d Money § 23

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### II. Nature and Incidents of Money


#### B. Title and Transfer

## § 23. Stolen money

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  5

West's Key Number Digest, [Payment](#)  10 to 12(5)

West's Key Number Digest, [Sales](#)  2963

#### A.L.R. Library

[What constitutes "recently" stolen property within rule inferring guilt from unexplained possession of such property, 89 A.L.R.3d 1202](#)

[Relative rights as between purchaser of chattel from one who had previously bought it with stolen money, and victim of the theft, 62 A.L.R.2d 537](#)

Money and banknotes are exceptions to the general rule that no one can obtain title to stolen property where the third person receiving the stolen funds does so in good faith, without notice of the theft, and for a valuable consideration.<sup>1</sup> In general, only bad faith on the part of a third person receiving stolen money, or the failure on the third person's part to give a valuable consideration for it, will defeat the third person's title to the money as against the true owner.<sup>2</sup>

Money lost by theft remains the property of the owner, at least as respects the finder.<sup>3</sup> Furthermore, where a principal receives money stolen by the agent and given in payment of a debt owed the principal by the agent, the principal holds it subject to the interest of the true owner.<sup>4</sup> Similarly, if the receiver of stolen money acts as a mere depositary for the thief and has not parted with valuable consideration, the money may be recovered from the third person.<sup>5</sup>

Footnotes

- 1                   U.S. v. Barnard, 72 F. Supp. 531 (W.D. Tenn. 1947); Kelley Kar Co. v. Maryland Cas. Co., 142 Cal. App. 2d 263, 298 P.2d 590, 62 A.L.R.2d 533 (2d Dist. 1956); City of Portland v. Berry, 86 Or. App. 376, 739 P.2d 1041, 4 U.C.C. Rep. Serv. 2d 474 (1987).  
One who receives money which has been illegally obtained by a third party in the due course of business, in good faith, and for valuable considerations, can keep it without liability to the person from whom it was stolen. *Sinclair Houston Federal Credit Union v. Hendricks*, 268 S.W.2d 290, 44 A.L.R.2d 1234 (Tex. Civ. App. Galveston 1954), writ refused n.r.e.
- 2                   Kelley Kar Co. v. Maryland Cas. Co., 142 Cal. App. 2d 263, 298 P.2d 590, 62 A.L.R.2d 533 (2d Dist. 1956); Funk v. Mid-City Trust & Sav. Bank, 260 Ill. App. 467, 1931 WL 2956 (1st Dist. 1931); Keck v. Yakima Sav. & Loan Ass'n, 160 Wash. 430, 295 P. 483 (1931).  
Where a person receiving money is a party to the fraud or conspiracy by which the money is procured, that person's title to it is not good as against the true owner. *McKinley v. Smith*, 128 Cal. App. 591, 17 P.2d 1032 (3d Dist. 1933).
- 3                   Flood v. City Nat. Bank of Clinton, 218 Iowa 898, 253 N.W. 509, 95 A.L.R. 1168 (1934).  
As to the burden of producing evidence regarding ownership, see § 18.
- 4                   Stone & Webster Engineering Corp. v. Hamilton Nat. Bank, for Use and Ben. of Emp. Liability Assur. Corp., 199 F.2d 127 (6th Cir. 1952).
- 5                   Stone & Webster Engineering Corp. v. Hamilton Nat. Bank, for Use and Ben. of Emp. Liability Assur. Corp., 199 F.2d 127 (6th Cir. 1952).

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## 53A Am. Jur. 2d Money § 24

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### II. Nature and Incidents of Money


#### B. Title and Transfer

## § 24. Stolen money—Money won by gambling

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  5

West's Key Number Digest, [Payment](#)  10 to 12(5)

### A.L.R. Library

[Rights of owner of stolen money as against one who won it in gambling transaction from thief, 44 A.L.R.2d 1242](#)

[Forfeiture of money used in connection with gambling or lottery, or seized by officers in connection with an arrest or search on premises where such activities took place, 19 A.L.R.2d 1228](#)

A person receiving stolen or embezzled money in a game of chance obtains no title to it as against the true owner, even though the person has no knowledge, actual or constructive, of the tainted character of the money.<sup>1</sup> Because the stolen money won by gambling is acquired in an unlawful manner, the reason for the rule allowing a third person to retain stolen funds received in good faith without notice of the theft for a valuable consideration<sup>2</sup> does not apply.<sup>3</sup> Thus, the true owner may recover the money.<sup>4</sup>

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### Footnotes

<sup>1</sup> [Newhall v. Kerner, 132 Misc. 750, 230 N.Y.S. 319 \(Sup 1928\); Sinclair Houston Federal Credit Union v. Hendricks, 268 S.W.2d 290, 44 A.L.R.2d 1234 \(Tex. Civ. App. Galveston 1954\), writ refused n.r.e.](#)

<sup>2</sup> [§ 23.](#)

- 3                    Sinclair Houston Federal Credit Union v. Hendricks, 268 S.W.2d 290, 44 A.L.R.2d 1234 (Tex. Civ. App. Galveston 1954), writ refused n.r.e.
- 4                    Scott v. Curd, 101 F. Supp. 396 (E.D. Ky. 1951); In re Globe Parcel Service, Inc., 75 B.R. 381 (E.D. Pa. 1987); Simpson v. Brooks, 208 Ark. 1093, 189 S.W.2d 364 (1945); Hartford Acc. & Indem. Co. v. Benevento, 133 N.J.L. 315, 44 A.2d 97 (N.J. Ct. Err. & App. 1945); Marett v. Shannon, 164 Misc. 790, 300 N.Y.S. 1248 (Sup 1936).

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## 53A Am. Jur. 2d Money III A Refs.

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### Money

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General

#### A. Overview; Constitutional Authority; Powers of Congress


[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, Banks and Banking  188

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West's Key Number Digest, [Payment](#)  10 to 12(5)

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A.L.R. Index, Federal Reserve Board and System

A.L.R. Index, Money or Cash

West's A.L.R. Digest, Banks and Banking  188

West's A.L.R. Digest, Currency Regulation  1

West's A.L.R. Digest, [Payment](#)  10 to 12(5)

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## 53A Am. Jur. 2d Money § 25

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General

#### A. Overview; Constitutional Authority; Powers of Congress

##### 1. Federal Powers and Bodies


## § 25. Powers of Congress to regulate money, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, Banks and Banking  188

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

The United States Constitution specifically grants Congress the power to coin money and to regulate the value of United States money and foreign coin,<sup>1</sup> thus plainly empowering Congress to deal with all monetary problems.<sup>2</sup> The purpose of this provision is to provide the same currency, having a uniform legal value, in all of the states.<sup>3</sup>

From the very early days of the republic, the powers to coin money and to regulate the value thereof have been broadly construed to regulate every phase of the subject of currency.<sup>4</sup> Thus, unless by so doing property is taken without due process of law,<sup>5</sup> Congress has the power to:<sup>6</sup>

- establish a uniform national currency
- declare of what it shall consist
- endow that currency with the character and qualities of money having a defined legal value by requiring its acceptance at its face value as legal tender in the discharge of all debts
- regulate the value of such money

**Observation:**

The power to coin money necessarily carries with it the power to declare what is money.<sup>7</sup>

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**Footnotes**

- 1 [U.S. Const. Art. I, § 8 cl 5.](#)  
Congress's constitutional power to "coin Money and regulate the Value thereof" included the authority to prohibit the alteration of genuine United States currency. [U.S. v. Gayekpar](#), 211 Fed. Appx. 533 (8th Cir. 2007).  
Under Congress's constitutional authority with respect to money, it can create a currency, uniform in value and description, and convenient and useful for circulation. [Exotic Coins, Inc. v. Beacom](#), 699 P.2d 930 (Colo. 1985).  
Congress is authorized to establish a uniform national currency, either in coin or in paper, and to make that currency, dollar for dollar, legal tender for the payment of all debts, public and private. [Solyom v. Maryland-National Capital Park and Planning Com'n](#), 53 Md. App. 280, 452 A.2d 1283 (1982).
- 2 [U.S. v. Ware](#), 608 F.2d 400 (10th Cir. 1979).  
Official devaluation of the dollar can be effected only by Congress. [Federal Maritime Commission v. Australia/U. S. Atlantic and Gulf Conference, A/S Atlantrafik](#), 337 F. Supp. 1032 (S.D. N.Y. 1972).
- 3 [Perry v. U.S.](#), 294 U.S. 330, 55 S. Ct. 432, 79 L. Ed. 912, 95 A.L.R. 1335 (1935); [Equitable Life Assur. Soc. of U.S. v. Grosvenor](#), 426 F. Supp. 67 (W.D. Tenn. 1976), *aff'd*, 582 F.2d 1279 (6th Cir. 1978); [Cohn v. Tucson Elec. Power Co.](#), 138 Ariz. 136, 673 P.2d 334 (Ct. App. Div. 2 1983); [Spurgeon v. Franchise Tax Board](#), 160 Cal. App. 3d 524, 206 Cal. Rptr. 636 (3d Dist. 1984); [Howe v. Commissioner of Revenue](#), 401 Mass. 1005, 515 N.E.2d 1190 (1987).
- 4 [U.S. v. Ware](#), 608 F.2d 400 (10th Cir. 1979).  
Under the United States Constitution, Congress has broad and exclusive power to coin money and regulate the value thereof. [Baird v. County Assessors of Salt Lake and Utah Counties](#), 779 P.2d 676 (Utah 1989).
- 5 [Norman v. Baltimore & O. R. Co.](#), 265 N.Y. 37, 191 N.E. 726, 93 A.L.R. 1523 (1934), *aff'd*, 294 U.S. 240, 55 S. Ct. 407, 79 L. Ed. 885, 95 A.L.R. 1352 (1935).
- 6 [People v. O'Campo](#), 330 Ill. App. 401, 71 N.E.2d 375 (1st Dist. 1947); [Norman v. Baltimore & O. R. Co.](#), 265 N.Y. 37, 191 N.E. 726, 93 A.L.R. 1523 (1934), *aff'd*, 294 U.S. 240, 55 S. Ct. 407, 79 L. Ed. 885, 95 A.L.R. 1352 (1935).  
As to what money constitutes legal tender, see § 11.
- 7 [Nixon v. Phillipoff](#), 615 F. Supp. 890 (N.D. Ind. 1985), *aff'd*, 787 F.2d 596 (7th Cir. 1986).  
The power to declare what shall be money and to regulate its value is vested in the Congress. [Allen v. Craig](#), 1 Kan. App. 2d 301, 564 P.2d 552 (1977).

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## 53A Am. Jur. 2d Money § 26

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### Money

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General

#### A. Overview; Constitutional Authority; Powers of Congress


##### 1. Federal Powers and Bodies

## § 26. U.S. Mint; Bureau of Engraving and Printing

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

Federal statutes govern the organization of the United States Mint<sup>1</sup> and the Bureau of Engraving and Printing,<sup>2</sup> specifying the location of the mints.<sup>3</sup> Furthermore, federal regulations specifically make provision for the Bureau of Mint operations and procedures,<sup>4</sup> as well as conduct in or on Bureau of Mint buildings and grounds.<sup>5</sup>

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### Footnotes

- <sup>1</sup> 31 U.S.C.A. §§ 5131 to 5136.
- <sup>2</sup> 31 U.S.C.A. §§ 5141 to 5144.
- <sup>3</sup> 31 U.S.C.A. § 5131(a).
- <sup>4</sup> 31 C.F.R. §§ 92.1 to 92.6.
- <sup>5</sup> 31 C.F.R. §§ 91.1 to 91.14.

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## 53A Am. Jur. 2d Money § 27

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General

#### A. Overview; Constitutional Authority; Powers of Congress

#### 2. Limitations on Powers of States


## § 27. Limitations on state powers regarding money, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, Banks and Banking  188

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

Under the United States Constitution, the several states are prohibited from coining money, from emitting bills of credit, and from making anything but gold and silver coin a tender in payment of debts.<sup>1</sup> The purpose of this provision of the Constitution is to prevent the individual states from establishing their own separate currencies and to vest Congress with the sole authority to establish and regulate a uniform national currency.<sup>2</sup> The states cannot declare what shall be money, or regulate its value, since whatever power there is over the currency is vested in Congress.<sup>3</sup> Furthermore, under the Supremacy Clause of the Federal Constitution, each state is required to honor the exclusive powers of Congress regarding money.<sup>4</sup>

### Observation:

To establish an infringement of the exclusively federal power to coin money, it is not enough that a token or note issued by a state is capable of being used as money. Rather, it must be fit for general circulation in the community as a substitute for money.<sup>5</sup>

The constitutional limitations on a state's powers regarding money do not prohibit a state from establishing banks<sup>6</sup> or providing facilities for cashing checks, drafts, money orders, and all other evidences of money.<sup>7</sup> Furthermore, state courts entertain issues concerning Congress's power over currency although they may not question the wisdom or expediency of Congress's determination to issue paper money.<sup>8</sup>

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Footnotes

- 1 U.S. Const. Art. I, § 10.
- 2 [Cohn v. Tucson Elec. Power Co.](#), 138 Ariz. 136, 673 P.2d 334 (Ct. App. Div. 2 1983).
- 3 [Norman v. Baltimore & O.R. Co.](#), 294 U.S. 240, 55 S. Ct. 407, 79 L. Ed. 885, 95 A.L.R. 1352 (1935).  
U.S. Const. Art. I, § 10 removes from the states the inherent sovereign power to declare currency, and the states must abide by the dictates of Congress. [Nixon v. Phillipoff](#), 615 F. Supp. 890 (N.D. Ind. 1985), *aff'd*, 787 F.2d 596 (7th Cir. 1986).
- 4 [Howe v. Commissioner of Revenue](#), 401 Mass. 1005, 515 N.E.2d 1190 (1987); [Richardson v. Richardson](#), 122 Mich. App. 531, 332 N.W.2d 524 (1983).  
As to the Supremacy Clause of the United States Constitution, see [Am. Jur. 2d, Constitutional Law § 53](#).
- 5 [Department of Corrections v. Piccirillo](#), 474 So. 2d 1199 (Fla. 1st DCA 1985).
- 6 [Woodruff v. Trapnall](#), 51 U.S. 190, 10 How. 190, 13 L. Ed. 383, 1850 WL 6893 (1850).
- 7 [McDougall v. Lueder](#), 389 Ill. 141, 58 N.E.2d 899, 156 A.L.R. 1059 (1945).
- 8 [Herald v. State](#), 107 Idaho 640, 691 P.2d 1255 (Ct. App. 1984).

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## 53A Am. Jur. 2d Money § 28

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### Money

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General

#### A. Overview; Constitutional Authority; Powers of Congress

#### 2. Limitations on Powers of States


## § 28. Authority of political subdivisions of states over money

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, Banks and Banking  188

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

A state municipality may execute its notes or obligations but cannot, against the will of Congress, make them money.<sup>1</sup>

City ordinances requiring wrecker operators to accept checks and credit cards for towing services do not create a new form of legal tender or regulate its value but merely direct an alternative manner of cash payment.<sup>2</sup> Similarly, a city ordinance requiring scrap metal dealers to pay for air conditioning coils with a check or money order mailed to a licensed contractor after a three-day wait and that other purchases of scrap metal be made with a payment voucher redeemable after three days did not restrict or regulate what counted as legal tender for the ultimate payment of debts, and therefore the ordinance did not implicate the legal tender statute or the constitutional power to coin money, as checks, money orders, and vouchers were promises to pay legal tender for the discharge of debt, and were not legal tender themselves.<sup>3</sup>

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### Footnotes

- <sup>1</sup> [Merchants' Nat. Bank v. U.S.](#), 101 U.S. 1, 25 L. Ed. 979, 1879 WL 16691 (1879).
- <sup>2</sup> [Berry v. Hannigan](#), 7 Cal. App. 4th 587, 9 Cal. Rptr. 2d 213 (1st Dist. 1992); [Porter v. City of Atlanta](#), 259 Ga. 526, 384 S.E.2d 631 (1989); [Cade v. Montgomery County](#), 83 Md. App. 419, 575 A.2d 744 (1990).
- <sup>3</sup> [Tennessee Scrap Recyclers Ass'n v. Bredesen](#), 556 F.3d 442 (6th Cir. 2009).

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## 53A Am. Jur. 2d Money § 29

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General


#### A. Overview; Constitutional Authority; Powers of Congress

##### 2. Limitations on Powers of States


## § 29. Taxation of coins and currency

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, Banks and Banking  188

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

Congress has granted the states the power to tax United States coins and currency, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banks, as money on hand or on deposit, in the same way and at the same rate that the state taxes other forms of money.<sup>1</sup>

State courts have rejected taxpayers' challenges questioning the state's power to—

— levy its own tax using the federally created unit of value.<sup>2</sup>

— assess property tax values based on Federal Reserve notes rather than gold-valued dollars.<sup>3</sup>

— require payment of taxes in Federal Reserve notes rather than gold or silver coin.<sup>4</sup>

— impose sales tax on the sale of gold and silver coins and bars sold for their value as precious metals.<sup>5</sup>

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### Footnotes

<sup>1</sup> 31 U.S.C.A. § 5154.

<sup>2</sup> *Spurgeon v. Franchise Tax Board*, 160 Cal. App. 3d 524, 206 Cal. Rptr. 636 (3d Dist. 1984).

- 3                   Baird v. County Assessors of Salt Lake and Utah Counties, 779 P.2d 676 (Utah 1989).  
4                   Herald v. State, 107 Idaho 640, 691 P.2d 1255 (Ct. App. 1984).  
5                   Scotchman's Coin Shop, Inc. v. Administrative Hearing Com'n, 654 S.W.2d 873 (Mo. 1983); Thorne and  
                    Wilson, Inc. v. Utah State Tax Com'n, 681 P.2d 1237 (Utah 1984).

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## 53A Am. Jur. 2d Money § 30

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General


#### A. Overview; Constitutional Authority; Powers of Congress


##### 2. Limitations on Powers of States

## § 30. Destruction of currency

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

Although the states may seize and confiscate United States currency, they cannot destroy it.<sup>1</sup>

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### Footnotes

- <sup>1</sup> [Ling Su Fan v. U.S.](#), 218 U.S. 302, 31 S. Ct. 21, 54 L. Ed. 1049 (1910); [State of N.J. v. Moriarity](#), 268 F. Supp. 546 (D.N.J. 1967); [Spagnuolo v. Bonnet](#), 16 N.J. 546, 109 A.2d 623 (1954).  
As to the federal power to coin money and regulate its value, see [§ 25](#).

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## 53A Am. Jur. 2d Money III B Refs.

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#### B. Issuance

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## Research References

### West's Key Number Digest

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### A.L.R. Library

A.L.R. Index, Coin Collections

A.L.R. Index, Comptroller of Currency

A.L.R. Index, Federal Reserve Board and System

A.L.R. Index, Money or Cash

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## 53A Am. Jur. 2d Money § 31

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General


#### B. Issuance

## § 31. Denominations of coin and currency

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

United States money is expressed in dollars, dimes (tenths), cents (hundredths), and mills (thousandths). A dime is a tenth of a dollar, a cent is a hundredth of a dollar, and a mill is a thousandth of a dollar.<sup>1</sup>

Anyone who makes, issues, circulates, or pays out any note, check, memorandum, token, or other obligation for a sum of less than \$1, intended to circulate as money or to be received or used in lieu of lawful United States money, is subject to fine and imprisonment.<sup>2</sup> However, the federal coinage and currency statutes do require a public carrier or other vendor to accept a particular denomination of currency.<sup>3</sup>

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### Footnotes

<sup>1</sup> 31 U.S.C.A. § 5101.

<sup>2</sup> 18 U.S.C.A. § 336.

<sup>3</sup> *Nemser v. New York City Transit Authority*, 140 Misc. 2d 369, 530 N.Y.S.2d 493 (Sup 1988).

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General


#### B. Issuance

## § 32. Coinage

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

The Secretary of the Treasury is authorized to mint and issue coins in amounts the Secretary decides are necessary to meet the nation's needs.<sup>1</sup> Congress has prescribed the denominations,<sup>2</sup> specifications,<sup>3</sup> and design and redesign<sup>4</sup> of coins that the Secretary may mint and issue. However, the Secretary of the Treasury is permitted to vary the weight and composition of copper and zinc in the alloy of one-cent coins as necessary to ensure an adequate supply of such coins.<sup>5</sup>

Federal law also provides for the manufacturing tolerances and testing of coins.<sup>6</sup> The standard troy pound of the National Institute of Standards and Technology of the Department of Commerce is the standard used to ensure that the weight of United States coins conforms to statutory specifications.<sup>7</sup>

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### Footnotes

<sup>1</sup> 31 U.S.C.A. § 5111(a)(1).

<sup>2</sup> 31 U.S.C.A. § 5112(a).

<sup>3</sup> 31 U.S.C.A. § 5112(a), (b).

<sup>4</sup> 31 U.S.C.A. § 5112(d), (l), (n), (o), (q), (r), (s), (t).

<sup>5</sup> 31 U.S.C.A. § 5112(c).

Congress intended to grant the Treasury Department broad discretion to meet national needs in the face of rising copper prices and the resulting hoarding of pennies by the public, not to benefit or protect the copper industry. [Copper & Brass Fabricators Council, Inc. v. Department of the Treasury](#), 679 F.2d 951 (D.C. Cir. 1982).



6 31 U.S.C.A. § 5113.

7 31 U.S.C.A. § 5102.

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General


#### B. Issuance

## § 33. Currency notes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

The Secretary of the Treasury is authorized by statute to issue United States currency notes payable to bearer and in a form and denomination of at least \$1.<sup>1</sup> The amount of currency notes outstanding and in circulation may not exceed \$300 million and may not be held or used for a reserve.<sup>2</sup> Notes must be engraved and printed from intaglio plates on plate printing presses selected by the Secretary.<sup>3</sup> Only the portrait of a deceased individual may appear on United States currency.<sup>4</sup>

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#### Footnotes

- 1 [31 U.S.C.A. § 5115\(a\)](#).  
As to the criminal offense of issuing notes for a sum of less than \$1, see [§ 31](#).
- 2 [31 U.S.C.A. § 5115\(b\)](#).
- 3 [31 U.S.C.A. § 5114\(a\)](#).
- 4 [31 U.S.C.A. § 5114\(b\)](#).

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## 53A Am. Jur. 2d Money § 34

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General


#### B. Issuance

## § 34. "In God We Trust" inscription

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

The requirement that United States coins<sup>1</sup> and currency<sup>2</sup> contain the inscription "In God We Trust" does not violate the Free Exercise and Establishment Clauses of the Federal Constitution.<sup>3</sup> Furthermore, the placement of "In God We Trust" on United States currency does not place a substantial burden upon the religious practices or beliefs of self-identified atheists and secular humanists, in violation of the Free Exercise Clause and the Religious Freedom Restoration Act (RFRA), despite their contention that the necessity of using currency required them to bear on their persons a statement that attributed to them personally a perceived falsehood that was the antithesis of the central tenant of their religious system. The carrying of currency, which is fungible and not publicly displayed, does not implicate the concerns that its bearer would be forced to proclaim a viewpoint contrary to the bearer's own.<sup>4</sup>

### CUMULATIVE SUPPLEMENT

#### Cases:

Placing "In God We Trust" on coins and currency was consistent with historical practices, weighing in favor of conclusion that such practice did not violate First Amendment's Establishment Clause; although specific practice of placing "In God We Trust" on U.S. money did not begin until 1864 and was not uniform across all currency until almost century later, practice comported with early understandings of Establishment Clause as illuminated by actions of First Congress, and history of official acknowledgment by all three branches of government of role of religion in American life from at least 1789. [U.S. Const. Amend. 1. New Doe Child #1 v. United States](#), 901 F.3d 1015 (8th Cir. 2018).

**[END OF SUPPLEMENT]**

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Footnotes

- 1 [31 U.S.C.A. § 5112\(d\)\(1\).](#)
- 2 [31 U.S.C.A. § 5114\(b\).](#)
- 3 [Aronow v. U.S., 432 F.2d 242 \(9th Cir. 1970\)](#) (considering a statutory predecessor to [31 U.S.C.A. §§ 5112\(d\)\(1\), 5114\(b\)](#)); [O'Hair v. Blumenthal, 462 F. Supp. 19 \(W.D. Tex. 1978\)](#), judgment aff'd, [588 F.2d 1144 \(5th Cir. 1979\)](#) (considering a statutory predecessor to [31 U.S.C.A. §§ 5112\(d\)\(1\), 5114\(b\)](#)); [Newdow v. Peterson, 753 F.3d 105 \(2d Cir. 2014\)](#); [Gaylor v. U.S., 74 F.3d 214 \(10th Cir. 1996\)](#).  
Statutes requiring the placement of motto "In God We Trust" on coins and currency does not violate the Establishment Clause of the First Amendment by placing the government's imprimatur on a belief in a monotheistic God. [Newdow v. Lefevre, 598 F.3d 638 \(9th Cir. 2010\)](#).
- 4 [Newdow v. Peterson, 753 F.3d 105 \(2d Cir. 2014\)](#).  
As to the Religious Freedom Restoration Act, see [Am. Jur. 2d, Constitutional Law § 446](#).

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## 53A Am. Jur. 2d Money III C Refs.

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General

#### C. Regulation

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Counterfeiting](#) 🔑7

West's Key Number Digest, [Currency Regulation](#) 🔑1

West's Key Number Digest, [Payment](#) 🔑10 to 12(5)

### A.L.R. Library

A.L.R. Index, Coin Collections

A.L.R. Index, Comptroller of Currency

A.L.R. Index, Federal Reserve Board and System

A.L.R. Index, Money or Cash

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West's A.L.R. Digest, [Payment](#) 🔑10 to 12(5)

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## 53A Am. Jur. 2d Money § 35

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General

#### C. Regulation


## § 35. Designation of counterfeit currency

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Counterfeiting](#)  7

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

When counterfeit notes intended to circulate as currency are presented to disbursing officials of the United States government and officers of national banks, they must stamp or mark the word "counterfeit," "altered," or "worthless" on such notes.<sup>1</sup>

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### Footnotes

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[31 U.S.C.A. § 5153](#).

As to counterfeiting, generally, see [Am. Jur. 2d, Counterfeiting §§ 1 to 5](#).

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## 53A Am. Jur. 2d Money § 36

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General


#### C. Regulation

## § 36. Exportation of coins

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

### A.L.R. Library

[Licensing and regulation of business of transmitting funds to foreign countries](#), 94 A.L.R.2d 496

The Secretary of the Treasury is authorized by statute to prohibit or limit the exportation of United States coins when necessary to protect the coinage of the nation.<sup>1</sup> There is attached to the ownership of coins those limitations which public policy may require by reason of their quality as a legal tender and as a medium of exchange.<sup>2</sup> To justify the exercise of export restrictions, it is only necessary that the means are reasonably adapted to conserve the general public interest and are not an arbitrary interference with private rights of contract or property.<sup>3</sup>

A knowing violation of any order, license, or regulation issued by the Secretary under the applicable statute is a criminal offense<sup>4</sup> and the exported coins are subject to forfeiture.<sup>5</sup>

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### Footnotes

<sup>1</sup> 31 U.S.C.A. § 5111(d)(1).

- 2 Perry v. U.S., 294 U.S. 330, 55 S. Ct. 432, 79 L. Ed. 912, 95 A.L.R. 1335 (1935) (gold coins).
- 3 O'Kane v. Catuira, 212 Cal. App. 2d 131, 27 Cal. Rptr. 818, 94 A.L.R.2d 487 (1st Dist. 1963); Wedesweiler  
v. Brundage, 297 Ill. 228, 130 N.E. 520 (1921).
- 4 31 U.S.C.A. § 5111(d)(2).
- 5 31 U.S.C.A. § 5111(d)(3).

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## 53A Am. Jur. 2d Money § 37

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General


#### C. Regulation

## § 37. Destruction, mutilation, or melting of coins

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

The Secretary of the Treasury is authorized by statute to prohibit or limit the melting or treatment of United States coins as necessary to protect the national coinage.<sup>1</sup> A knowing violation of any order, license, or regulation issued by the Secretary under this statute is a criminal offense<sup>2</sup> and the coins melted or treated, as well as the resulting metal, are subject to forfeiture.<sup>3</sup>

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### Footnotes

- 1 [31 U.S.C.A. § 5111\(d\)\(1\)](#).  
As to the criminal offense of mutilation of coins or currency, see [§ 72](#).
- 2 [31 U.S.C.A. § 5111\(d\)\(2\)](#).
- 3 [31 U.S.C.A. § 5111\(d\)\(3\)](#).

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## 53A Am. Jur. 2d Money § 38

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### Money

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General


#### C. Regulation

## § 38. Buying obligations of federal government

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

The President may direct the Secretary of the Treasury to make an agreement with the Federal Reserve banks and the Board of Governors of the Federal Reserve System when the President decides that the foreign commerce of the United States is affected adversely because:

- (1) the value of coins and currency of a foreign country compared to the present standard value of gold is depreciating;<sup>1</sup>
- (2) action is necessary to regulate and maintain the parity of United States coins and currency;<sup>2</sup>
- (3) an economic emergency requires an expansion of credit;<sup>3</sup> or
- (4) an expansion of credit is necessary so that the United States government and the governments of other countries can stabilize the value of coins and currency of a country.<sup>4</sup>

Under such an agreement, the Board of Governors of the Federal Reserve System is required by statute to permit the banks to agree that such banks will conduct through each entire specified period open market operations in obligations of the United States government or corporations in which the government is the majority stockholder<sup>5</sup> and buy and hold additional obligations of the United States government unless the Secretary consent to the sale of the obligations before the end of the period.<sup>6</sup>

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#### Footnotes

- 1 31 U.S.C.A. § 5301(a)(1).
- 2 31 U.S.C.A. § 5301(a)(2).
- 3 31 U.S.C.A. § 5301(a)(3).
- 4 31 U.S.C.A. § 5301(a)(4).
- 5 31 U.S.C.A. § 5301(b)(1).
- 6 31 U.S.C.A. § 5301(b)(2).

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## 53A Am. Jur. 2d Money III D Refs.

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General


#### D. Exchange, Redemption, and Cancellation

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

### A.L.R. Library

A.L.R. Index, Coin Collections

A.L.R. Index, Comptroller of Currency

A.L.R. Index, Federal Reserve Board and System

A.L.R. Index, Gold

A.L.R. Index, Money or Cash

A.L.R. Index, Silver

West's A.L.R. Digest, [Currency Regulation](#)  1

West's A.L.R. Digest, [Payment](#)  10 to 12(5)

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## 53A Am. Jur. 2d Money § 39

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General


#### D. Exchange, Redemption, and Cancellation

## § 39. Exchange or redemption of coins and currency, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

A person lawfully holding United States coins and currency may present the coins and currency to the Secretary of the Treasury for exchange, dollar for dollar, for other lawful United States coins and currency, excluding gold and silver coins.<sup>1</sup> The Secretary may—

— redeem United States currency notes upon presentation and to cancel and destroy currency upon redemption.<sup>2</sup>

— withhold from cancellation and destruction a limited amount of redeemed currency to provide a historical collection of United States currency.<sup>3</sup>

— determine the amount of currency that will not be redeemed because it has been destroyed or irretrievably lost and to reduce the amount of outstanding currency by the amount the Secretary determines will not be redeemed.<sup>4</sup>

Paper currency of the United States which has been falsely altered and coins altered to render them for use as other denominations will not be redeemed since such currency and coins are subject to forfeiture.<sup>5</sup>

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### Footnotes

1 31 U.S.C.A. § 5118(b); 31 C.F.R. § 100.3.

As to prohibition on payment in gold by government, see § 45.

2 31 U.S.C.A. § 5119(b).

- 3                    [31 U.S.C.A. § 5119\(d\)](#).
- 4                    [31 U.S.C.A. § 5119\(c\)](#).
- 5                    [31 C.F.R. § 100.3](#), noting that persons receiving such currency and coins should notify immediately the nearest local office of the U.S. Secret Service of the Department of the Treasury, and hold them pending advice from the Service.

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## 53A Am. Jur. 2d Money § 40

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General


#### D. Exchange, Redemption, and Cancellation

## § 40. Obsolete, mutilated, or worn coins

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

The Secretary of the Treasury must melt obsolete and worn United States coins withdrawn from circulation and may either use the resulting metal for reminting or sell it.<sup>1</sup> Coins that have been worn or reduced in weight by natural abrasion may be redeemed at face value if they are readily and clearly recognizable as to genuineness and denomination and are machine countable.<sup>2</sup> Bent or partial coins that are readily and clearly identifiable as to genuineness and denomination may be redeemed on the basis of their weight and denomination category rates.<sup>3</sup> The United States Mint will not accept fused or mixed coins for redemption.<sup>4</sup>

### CUMULATIVE SUPPLEMENT

#### Statutes:

[31 C.F.R. § 100.10](#), as revised effective January 19, 2018, provides that whole U.S. coins that are merely worn or reduced in weight by natural abrasion yet are readily and clearly recognizable as to genuineness and denomination and which are machine countable will not be accepted by the United States Mint for redemption. Members of the public wishing to redeem lawfully held uncurrent coins must deposit the uncurrent coins with a bank or other financial institution that will accept them, or with a depository institution that has established a direct customer relationship with a Federal Reserve Bank.

[END OF SUPPLEMENT]

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Footnotes

- 1                    [31 U.S.C.A. § 5120\(a\)\(1\)](#).  
As to the criminal offense of mutilation of coins or currency, see [§ 72](#).
- 2                    [31 C.F.R. § 100.10](#).
- 3                    [31 C.F.R. § 100.11](#).
- 4                    [31 C.F.R. § 100.12\(b\)](#).

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## 53A Am. Jur. 2d Money § 41

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### III. Issuance, Regulation, and Redemption of Coinage and Currency, in General


#### D. Exchange, Redemption, and Cancellation

## § 41. Obsolete, mutilated, or worn currency notes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  1

West's Key Number Digest, [Payment](#)  10 to 12(5)

### Definition:

"Mutilated currency" is currency which has been damaged to the extent that one-half or less of the original note remains, or its condition is such that its value is questionable and the currency must be forward to the Department of the Treasury for examination by trained experts before any redemption is made.<sup>1</sup>

The Secretary of the Treasury is authorized to cancel and destroy obsolete, mutilated, and worn United States currency withdrawn from circulation and to dispose of the residue.<sup>2</sup> Lawfully held mutilated United States paper currency may be redeemed at face amount if sufficient remnants of any relevant security feature and clearly more than one-half of the original note remains.<sup>3</sup> Fragments which are not clearly more than one-half of the original whole note or are lacking sufficient remnants of any relevant security feature will be redeemed at face value only if the Director, Bureau of Engraving and Printing, Department of the Treasury, is satisfied that the missing portions have been totally destroyed.<sup>4</sup> The Director's judgment must be based on evidence of total destruction as is necessary and will be final.<sup>5</sup> No relief will be granted on account of lawfully held paper currency which has been totally destroyed.<sup>6</sup> No redemption will be made when:<sup>7</sup>

- (1) a submission, or any portion thereof, demonstrates a pattern of intentional mutilation or an attempt to defraud the United States;
- (2) a submission appears to be part of, or intended to further, any criminal scheme;
- (3) a submission contains a material misrepresentation of facts;
- (4) fragments and remnants presented are not identifiable as United States currency; or
- (5) fragments and remnants presented which represent 50% or less of a note are identifiable as United States currency but the method of destruction and supporting evidence do not satisfy the Treasury that the missing portion has been totally destroyed. The responsibility for reconstructing and counting mutilated currency lies with the Treasury Department, not with the person seeking to have the money redeemed.<sup>8</sup>

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Footnotes

- 1 [31 C.F.R. § 100.5\(b\).](#)  
As to the criminal offense of mutilation of coins or currency, see [§ 72](#).
- 2 [31 U.S.C.A. § 5120\(b\).](#)
- 3 [31 C.F.R. § 100.5\(a\); 31 C.F.R. § 100.7\(a\)\(1\).](#)
- 4 [31 C.F.R. § 100.5\(a\); 31 C.F.R. § 100.7\(a\)\(2\).](#)
- 5 [31 C.F.R. § 100.5\(a\).](#)
- 6 [31 C.F.R. § 100.6.](#)
- 7 [31 C.F.R. § 100.7\(b\).](#)
- 8 [Krigel v. U.S., 229 Ct. Cl. 73, 662 F.2d 741 \(1981\).](#)

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## 53A Am. Jur. 2d Money IV A Refs.

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### IV. Regulation of Gold and Silver

#### A. Gold

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#) 🔑2

West's Key Number Digest, [Payment](#) 🔑10, 11, 12(1)

### A.L.R. Library

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A.L.R. Index, Comptroller of Currency

A.L.R. Index, Federal Reserve Board and System

A.L.R. Index, Gold

A.L.R. Index, Money or Cash

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West's A.L.R. Digest, [Payment](#) 🔑10, 11, 12(1)

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## 53A Am. Jur. 2d Money § 42

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### IV. Regulation of Gold and Silver

#### A. Gold

##### 1. In General

## § 42. Congressional power to regulate

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  2

West's Key Number Digest, [Payment](#)  12(1)

Congress may limit the ownership of gold as public policy requires by reason of its quality as legal tender and as a medium of exchange.<sup>1</sup> Thus, Congress may withdraw gold coin from circulation.<sup>2</sup> Congress also has the power to appropriate to the government outstanding gold bullion, gold coin, and gold certificates and to compel all residents of the United States to deliver to the government all gold bullion, gold coins, and gold certificates in their possession.<sup>3</sup>

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### Footnotes

- <sup>1</sup> [Exotic Coins, Inc. v. Beacom](#), 699 P.2d 930 (Colo. 1985).
- <sup>2</sup> [Norman v. Baltimore & O.R. Co.](#), 294 U.S. 240, 55 S. Ct. 407, 79 L. Ed. 885, 95 A.L.R. 1352 (1935); [Hunsaker v. U.S.](#), 279 F.2d 111 (9th Cir. 1960).
- <sup>3</sup> [Nortz v. U.S.](#), 294 U.S. 317, 55 S. Ct. 428, 79 L. Ed. 907, 95 A.L.R. 1346 (1935); [U.S. v. Barnard](#), 72 F. Supp. 531 (W.D. Tenn. 1947).  
Congress has the power to require the surrender of gold coin and gold certificates in exchange for other currency not redeemable in gold. [U.S. v. Ware](#), 608 F.2d 400 (10th Cir. 1979).

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### IV. Regulation of Gold and Silver


#### A. Gold

##### 1. In General

## § 43. Gold as standard of value

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  2

West's Key Number Digest, [Payment](#)  12(1)

In 1975, the member nations of the International Monetary Fund formulated a plan known as the Jamaica Accords to eliminate gold as the basis of the international monetary system.<sup>1</sup> In 1976, Congress passed legislation amending the Bretton Woods Agreement Act<sup>2</sup> to implement the new International Monetary Fund agreement. The par value of the dollar was thus repealed.<sup>3</sup> Since 1976, no statutory value has existed defining a relationship between the United States dollar and gold.<sup>4</sup> With that action, citizens could no longer demand gold from the Treasury in exchange for paper bills.<sup>5</sup>

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### Footnotes

- 1 [Trans World Airlines, Inc. v. Franklin Mint Corp.](#), 466 U.S. 243, 104 S. Ct. 1776, 80 L. Ed. 2d 273 (1984).
- 2 [Pub. L. No. 94-564 § 6](#); 90 Stat. 2660.
- 3 [Trans World Airlines, Inc. v. Franklin Mint Corp.](#), 466 U.S. 243, 104 S. Ct. 1776, 80 L. Ed. 2d 273 (1984).
- 4 [Baird v. County Assessors of Salt Lake and Utah Counties](#), 779 P.2d 676 (Utah 1989).
- 5 [Rudolph v. Steinhardt](#), 721 F.2d 1324 (11th Cir. 1983).

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### IV. Regulation of Gold and Silver


#### A. Gold

##### 1. In General

## § 44. Purchase and sale of gold by government

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  2

West's Key Number Digest, [Payment](#)  12(1)

With the President's approval, the Secretary of the Treasury may buy and sell gold on conditions that the Secretary considers most advantageous to the public interest.<sup>1</sup> The authority is not confined to gold in monetary form but extends to all gold (save gold in its natural state), including newly minted gold.<sup>2</sup>

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### Footnotes

<sup>1</sup> 31 U.S.C.A. § 5116(a)(1)(A).

<sup>2</sup> [Laycock v. Kenney](#), 270 F.2d 580, 2 Fed. R. Serv. 2d 330 (9th Cir. 1959).

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### IV. Regulation of Gold and Silver


#### A. Gold

##### 1. In General

## § 45. Payment in gold by government

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  2

West's Key Number Digest, [Payment](#)  12(1)

The United States government is statutorily prohibited from paying out any gold coin.<sup>1</sup> The Secretary of the Treasury cannot redeem United States currency in gold except to the extent authorized in regulations approved by the President.<sup>2</sup>

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### Footnotes

<sup>1</sup> 31 U.S.C.A. § 5118(b).

<sup>2</sup> 31 U.S.C.A. § 5119(a).

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### IV. Regulation of Gold and Silver

#### A. Gold

##### 1. In General

## § 46. Title to gold transferred

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  2

West's Key Number Digest, [Payment](#)  12(1)

By federal statute, all right, title, and interest, and every claim of the Board of Governors of the Federal Reserve System, a Federal Reserve bank, and a Federal Reserve agent, in and to gold is transferred to and vests in the United States government to be held in the Treasury.<sup>1</sup> The Secretary must issue gold certificates against gold so transferred.<sup>2</sup> Gold not in the possession of the government must be held in custody for the government and delivered on the order of the Secretary of the Treasury.<sup>3</sup>

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### Footnotes

- <sup>1</sup> 31 U.S.C.A. § 5117(a).  
<sup>2</sup> 31 U.S.C.A. § 5117(b).  
As to gold certificates, generally, see [§ 47](#).  
<sup>3</sup> 31 U.S.C.A. § 5117(a).

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### IV. Regulation of Gold and Silver


#### A. Gold

##### 1. In General

## § 47. Gold certificates

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  2

West's Key Number Digest, [Payment](#)  12(1)

The Secretary of the Treasury may issue gold certificates against gold held in the Treasury and may prescribe the form and denominations of the certificates.<sup>1</sup> The amount of outstanding certificates may not be more than the value of the gold held against gold certificates.<sup>2</sup>

The Secretary may redeem gold certificates owned by the Federal Reserve banks as the Secretary decides are necessary to maintain the equal purchasing power of each kind of United States currency.<sup>3</sup>

Gold certificates issued before January 30, 1934, are considered public debts bearing no interest<sup>4</sup> and may be redeemed in the same manner as other currency.<sup>5</sup> An owner of gold certificates does not sustain a loss for which the owner is entitled to be compensated in being compelled to surrender such certificates in exchange for legal tender currency of an equivalent face amount even if the market price of the gold represented by the certificates is in excess of the currency received at the time of surrender.<sup>6</sup>

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### Footnotes

- <sup>1</sup> 31 U.S.C.A. § 5117(b).
- <sup>2</sup> 31 U.S.C.A. § 5117(b).
- <sup>3</sup> 31 U.S.C.A. § 5119(a).

4 31 U.S.C.A. § 5119(b)(1)(A).

5 31 U.S.C.A. § 5119(b)(2).

As to the redemption of currency, see § 39.

6 *Nortz v. U.S.*, 294 U.S. 317, 55 S. Ct. 428, 79 L. Ed. 907, 95 A.L.R. 1346 (1935).

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### IV. Regulation of Gold and Silver


#### A. Gold

##### 1. In General

## § 48. Gold bullion deposits

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  2

West's Key Number Digest, [Payment](#)  12(1)

A person owning gold bullion may deposit it with the Secretary of the Treasury,<sup>1</sup> who is directed by statute to assay, melt, and refine gold bullion and cast deposits into bars.<sup>2</sup> The Secretary may refuse a deposit of gold bullion if the deposit is less than \$100 in value or the bullion is so base that it is unsuitable for the operations of the Bureau of the Mint.<sup>3</sup> The Secretary pays depositors money or bars equivalent to the bullion deposited as soon as practicable after its value is determined,<sup>4</sup> imposing a charge for costs incurred by the mint or assay office.<sup>5</sup>

### Observation:

Federal regulations establish a policy under which certain purchasers or holders of gold coins who have forfeited them to the United States because they were counterfeit may, in the discretion of the Secretary of the Treasury, recover the gold bullion from the coins.<sup>6</sup>

Footnotes

- 1 31 U.S.C.A. § 5121(b).
- 2 31 U.S.C.A. § 5121(a).
- 3 31 U.S.C.A. § 5121(b).
- 4 31 U.S.C.A. § 5122(c).
- 5 31 U.S.C.A. § 5122(b).
- 6 31 C.F.R. §§ 101.1 to 101.8.

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### IV. Regulation of Gold and Silver


#### A. Gold

##### 1. In General

## § 49. Numismatic gold coins

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  2

West's Key Number Digest, [Payment](#)  12(1)

### Trial Strategy

[Proof of Value of Coin Collection, 95 Am. Jur. Proof of Facts 3d 155](#)

The Secretary of the Treasury is authorized to mint and issue gold coins in the denominations of \$50, \$25, \$10, and \$5<sup>1</sup> as numismatic items<sup>2</sup> in quantities sufficient to meet public demand.<sup>3</sup> Such coins are to be sold to the public at a price equal to the market value of the bullion at the time of sale, plus the cost of minting, marketing, and distributing the coins.<sup>4</sup> The Secretary may make bulk sales of the coins at a reasonable discount.<sup>5</sup> The manner in which the Secretary must obtain the gold for such coins is regulated by statute.<sup>6</sup>

The statute authorizing the Secretary of Treasury to mint coins as collectors' items and to sell them to the public at a price based on the market value of bullion plus production costs did not create a parallel or dual monetary valuation system for coins.<sup>7</sup>

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Footnotes

- 1 31 U.S.C.A. § 5112(a)(7) to (10).
- 2 31 U.S.C.A. § 5112(i)(1), (3).
- 3 31 U.S.C.A. § 5112(i)(1).
- 4 31 U.S.C.A. § 5112(i)(2)(A).
- 5 31 U.S.C.A. § 5112(i)(2)(B).
- 6 31 U.S.C.A. § 5116(a)(3).
- 7 *Crummey v. Klein Independent School Dist.*, 295 Fed. Appx. 625 (5th Cir. 2008).

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### IV. Regulation of Gold and Silver


#### A. Gold

#### 2. Agreements to Pay in Gold

## § 50. Statutory invalidation of gold clauses

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  2

West's Key Number Digest, [Payment](#)  10, 11, 12(1)

### Definitions:

A "gold clause" is a provision in or related to an obligation alleging to give the obligee a right to require payment in:<sup>1</sup>

(1) gold;

(2) a particular United States coin or currency; or

(3) United States money measured in gold or a particular United States coin or currency.

As used in the statute regulating gold clauses, "obligation" means any obligation (except United States currency) payable in United States money.<sup>2</sup>

By federal statute, an obligation issued on or before October 27, 1977, that contains a gold clause or is governed by a gold clause is discharged on payment (dollar for dollar) in United States coin or currency that is legal tender at the time of payment.<sup>3</sup> The

effect of this statute is to strike from a contract the specification of gold coin as the medium of payment of the debt.<sup>4</sup> However, a gold clause does not invalidate the entire contract; obligations calling for payment in gold remain dischargeable in legal tender.<sup>5</sup>

**Caution:**

Obligations issued after October 27, 1977, are not subject to this statute.<sup>6</sup>

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Footnotes

- 1 31 U.S.C.A. § 5118(a)(1).
- 2 31 U.S.C.A. § 5118(d)(1).
- 3 31 U.S.C.A. § 5118(d)(2).
- 4 *Security-First Nat. Bank of Los Angeles v. Cuesta*, 15 Cal. App. 2d 302, 59 P.2d 542 (2d Dist. 1936).
- 5 *Bethlehem Steel Co. v. Zurich General Accident & Liability Ins. Co.*, 307 U.S. 265, 59 S. Ct. 856, 83 L. Ed. 1280 (1939); *Equitable Life Assur. Soc. v. Freda*, 32 Ohio N.P. (n.s.) 65, 1934 WL 1923 (C.P. 1934).
- 6 31 U.S.C.A. § 5118(d)(2).  
As to the construction of the amendment lifting the invalidation of gold clauses in obligations issued after October 27, 1977, see § 54.

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## 53A Am. Jur. 2d Money § 51

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### Money

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### IV. Regulation of Gold and Silver


#### A. Gold


#### 2. Agreements to Pay in Gold

## § 51. Purpose of statute invalidating gold clauses

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  2

West's Key Number Digest, [Payment](#)  10, 11, 12(1)

The statute invalidating gold clauses in contracts<sup>1</sup> was enacted to prevent persons holding contracts from requiring payments of debts in a frozen money value rather than in legal tender current at the date of payment.<sup>2</sup> Congress intended that debtors under obligation to pay dollars should not have their debts tied to any fixed value of particular money, but to the actual number of dollars promised.<sup>3</sup>

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### Footnotes

- 1 § 50.
- 2 *Com. v. Venen*, 288 Pa. Super. 143, 431 A.2d 329 (1981).
- 3 *Rudolph v. Steinhardt*, 721 F.2d 1324 (11th Cir. 1983).

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## 53A Am. Jur. 2d Money § 52

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### IV. Regulation of Gold and Silver


#### A. Gold


#### 2. Agreements to Pay in Gold

## § 52. Scope and application of statute invalidating gold clauses

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  2

West's Key Number Digest, [Payment](#)  10, 11, 12(1)

The statute invalidating gold clauses<sup>1</sup> extends to all contractual obligations requiring payment in an amount of money measured by gold.<sup>2</sup> It does not matter whether the amount is measured by the market value of gold or the official price of gold.<sup>3</sup>

Courts have applied the statute to invalidate lease provisions that increase rent payments in proportion to official devaluations of the dollar<sup>4</sup> and to reject claims that railroad bonds must be paid in gold coin or its equivalent as required by the terms of the bonds.<sup>5</sup>

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### Footnotes

- 1 § 50.
- 2 [Rudolph v. Steinhardt](#), 721 F.2d 1324 (11th Cir. 1983); [Nye v. Schwab](#), 58 Ohio App. 422, 12 Ohio Op. 249, 16 N.E.2d 783 (7th Dist. Ashtabula County 1938).
- 3 [Rudolph v. Steinhardt](#), 721 F.2d 1324 (11th Cir. 1983).
- 4 [Rudolph v. Steinhardt](#), 721 F.2d 1324 (11th Cir. 1983); [REC Centers, Inc. v. Shaughnessy](#), 407 So. 2d 971 (Fla. 4th DCA 1981).
- 5 [Southern Capital Corp. v. Southern Pac. Co.](#), 568 F.2d 590 (8th Cir. 1978); [Gold Bondholders Protective Council v. Atchison, Topeka and Santa Fe Ry. Co.](#), 649 P.2d 947 (Alaska 1982); [Schickler v. Santa Fe Southern Pacific Corp.](#), 229 Ill. App. 3d 291, 171 Ill. Dec. 141, 593 N.E.2d 961 (1st Dist. 1992).

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## 53A Am. Jur. 2d Money § 53

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### IV. Regulation of Gold and Silver


#### A. Gold


#### 2. Agreements to Pay in Gold

## § 53. Constitutionality of statute invaliding gold clauses; power of Congress

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  2

West's Key Number Digest, [Payment](#)  10, 11, 12(1)

The statute invalidating gold clauses<sup>1</sup> is within the constitutional grant of power to Congress to coin money and regulate its value, and its broad aggregate powers over revenue, finance, and currency generally.<sup>2</sup> The power applies even to contracts executed before the enactment of the legislation.<sup>3</sup>

Although the statute was enacted in response to the economic emergency brought about by the Great Depression, courts have rejected arguments that its validity must be reconsidered in light of current conditions<sup>4</sup> or that the statute does not meet substantive due process requirements.<sup>5</sup> To the contrary, courts have held that since the statute is grounded in the constitutional power of Congress over the monetary system, it remains valid.<sup>6</sup>

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### Footnotes

- 1 [§ 50.](#)
- 2 [Norman v. Baltimore & O.R. Co., 294 U.S. 240, 55 S. Ct. 407, 79 L. Ed. 885, 95 A.L.R. 1352 \(1935\).](#)
- 3 [U.S. v. Ware, 608 F.2d 400 \(10th Cir. 1979\).](#)
- 4 [Gold Bondholders Protective Council v. Atchison, Topeka and Santa Fe Ry. Co., 649 P.2d 947 \(Alaska 1982\).](#)
- 5 [Southern Capital Corp. v. Southern Pac. Co., 568 F.2d 590 \(8th Cir. 1978\).](#)

6                      [Southern Capital Corp. v. Southern Pac. Co.](#), 568 F.2d 590 (8th Cir. 1978); [Schickler v. Santa Fe Southern Pacific Corp.](#), 229 Ill. App. 3d 291, 171 Ill. Dec. 141, 593 N.E.2d 961 (1st Dist. 1992).

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## 53A Am. Jur. 2d Money § 54

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### IV. Regulation of Gold and Silver


#### A. Gold


#### 2. Agreements to Pay in Gold

## § 54. Construction of amendment lifting invalidation of gold clauses

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  2

West's Key Number Digest, [Payment](#)  10, 11, 12(1)

The statutory amendment lifting the gold clause prohibition applies only to obligations issued after October 27, 1977.<sup>1</sup> The statute remains enforceable with respect to preexisting obligations issued on or before October 27, 1977,<sup>2</sup> even with respect to rents or other payments coming due after that date.<sup>3</sup> For example, gold clauses in railroad bonds which were abrogated under the statute were not revived with the 1977 amendment<sup>4</sup> so that bonds issued before enactment of the 1977 statute were payable in any legal tender notwithstanding the gold clause.<sup>5</sup>

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### Footnotes

- 1 [§ 50.](#)  
The federal act invalidating gold clauses was not impliedly repealed by the 1977 amendment which provided that the prohibition would not apply to gold clauses in obligations issued on or after the date of the amendment. [Schickler v. Santa Fe Southern Pacific Corp.](#), 229 Ill. App. 3d 291, 171 Ill. Dec. 141, 593 N.E.2d 961 (1st Dist. 1992).
- 2 [Rudolph v. Steinhardt](#), 721 F.2d 1324 (11th Cir. 1983); [Schickler v. Santa Fe Southern Pacific Corp.](#), 229 Ill. App. 3d 291, 171 Ill. Dec. 141, 593 N.E.2d 961 (1st Dist. 1992).
- 3 [Rudolph v. Steinhardt](#), 721 F.2d 1324 (11th Cir. 1983).
- 4 [Adams v. Burlington Northern R. Co.](#), 80 F.3d 1377, 29 U.C.C. Rep. Serv. 2d 213 (9th Cir. 1996).
- 5 [Adams v. Burlington Northern R. Co.](#), 80 F.3d 1377, 29 U.C.C. Rep. Serv. 2d 213 (9th Cir. 1996).

A gold clause in railway bonds issued in 1895 was unenforceable even though subsequent purchasers did not receive the bonds until 1980. [Gold Bondholders Protective Council v. Atchison, Topeka and Santa Fe Ry. Co.](#), 649 P.2d 947 (Alaska 1982).

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## 53A Am. Jur. 2d Money IV B Refs.

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### IV. Regulation of Gold and Silver

#### B. Silver

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#) 🔑2

West's Key Number Digest, [Payment](#) 🔑12(1)

### A.L.R. Library

A.L.R. Index, Coin Collections

A.L.R. Index, Comptroller of Currency

A.L.R. Index, Federal Reserve Board and System

A.L.R. Index, Money or Cash

A.L.R. Index, Silver

West's A.L.R. Digest, [Currency Regulation](#) 🔑2

West's A.L.R. Digest, [Payment](#) 🔑12(1)

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## 53A Am. Jur. 2d Money § 55

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### IV. Regulation of Gold and Silver

#### B. Silver

## § 55. Purchase and sale of silver by government

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  2

West's Key Number Digest, [Payment](#)  12(1)

The Secretary of the Treasury is authorized to buy silver mined from natural deposits in the United States or its territories or possessions if it is brought to a United States mint or assay office within one year after the month in which the ore from which it is derived was mined.<sup>1</sup> With the exception of silver transferred to stockpiles, the Secretary may use government silver to mint coins or may sell it under conditions the Secretary considers appropriate.<sup>2</sup>

Federal regulations govern the conditions under which silver will be sold.<sup>3</sup>

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### Footnotes

- 1 [31 U.S.C.A. § 5116\(b\)\(1\).](#)
- 2 [31 U.S.C.A. § 5116\(b\)\(2\).](#)
- 3 [31 C.F.R. §§ 56.1, 56.2.](#)

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## 53A Am. Jur. 2d Money § 56

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### IV. Regulation of Gold and Silver

### B. Silver

## § 56. Silver certificates

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  2

West's Key Number Digest, [Payment](#)  12(1)

Silver certificates are considered public debts bearing no interest<sup>1</sup> and may be redeemed in the same manner as other currency.<sup>2</sup>

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### Footnotes

<sup>1</sup> 31 U.S.C.A. § 5119(b)(1)(B).

<sup>2</sup> 31 U.S.C.A. § 5119(b)(2).

As to redemption of currency, see [§ 39](#).

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## 53A Am. Jur. 2d Money § 57

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### IV. Regulation of Gold and Silver


### B. Silver

## § 57. Silver bullion deposits

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  2

West's Key Number Digest, [Payment](#)  12(1)

A person owning silver bullion may deposit it with the Secretary of the Treasury,<sup>1</sup> who is directed by statute to assay, melt, and refine silver bullion and cast deposits into bars.<sup>2</sup> Pursuant to federal statute,<sup>3</sup> the Secretary pays depositors of silver bullion in the same manner as depositors of gold bullion are paid.<sup>4</sup>

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### Footnotes

- 1 [31 U.S.C.A. § 5121\(b\)](#).
- 2 [31 U.S.C.A. § 5121\(a\)](#).
- 3 [31 U.S.C.A. § 5122](#).
- 4 As to payment to depositors of gold bullion, see [§ 48](#).

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## 53A Am. Jur. 2d Money § 58

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### IV. Regulation of Gold and Silver

#### B. Silver

## § 58. Numismatic silver coins

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  2

West's Key Number Digest, [Payment](#)  12(1)

### Trial Strategy

[Proof of Value of Coin Collection](#), 95 Am. Jur. Proof of Facts 3d 155

The Secretary of the Treasury is authorized to mint and issue silver coins<sup>1</sup> as numismatic items<sup>2</sup> in quantities sufficient to meet public demand.<sup>3</sup> Such coins are to be sold to the public at a price equal to the market value of the bullion at the time of sale, plus the cost of minting, marketing, and distributing the coins.<sup>4</sup> The Secretary may make bulk sales of the coins at a reasonable discount.<sup>5</sup> The manner in which the Secretary must obtain the silver for such coins is regulated by statute.<sup>6</sup>

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### Footnotes

- 1 31 U.S.C.A. § 5112(e).
- 2 31 U.S.C.A. § 5112(f)(3), (g).
- 3 31 U.S.C.A. § 5112(e).
- 4 31 U.S.C.A. § 5112(f)(1).
- 5 31 U.S.C.A. § 5112(f)(2).

6                                      [31 U.S.C.A. § 5116\(b\)\(2\).](#)

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## 53A Am. Jur. 2d Money V A Refs.

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### V. Criminal Offenses Involving Money

#### A. Money Laundering

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  4, 5

### A.L.R. Library

A.L.R. Index, Money Laundering

A.L.R. Index, Money or Cash

West's A.L.R. Digest, [Currency Regulation](#)  4, 5

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## 53A Am. Jur. 2d Money § 59

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### V. Criminal Offenses Involving Money

#### A. Money Laundering

##### 1. In General

## § 59. Money laundering, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  4

### A.L.R. Library

[What is considered property "involved in" money laundering offense, and thus subject to civil or criminal forfeiture, for purposes of Money Laundering Control Act \(18 U.S.C.A. sec. 981\(a\)\(1\)\(A\) and 982\(a\)\(1\)\), 135 A.L.R. Fed. 367](#)

### Observation:

Courts have referred to both the statute proscribing the laundering of monetary instruments<sup>1</sup> and the statute proscribing monetary transactions in criminal derived property<sup>2</sup> in tandem as "money laundering" statutes.<sup>3</sup>

Federal law requires the Secretary of the Treasury and the Attorney General to develop a program to support local law enforcement efforts in the development and implementation of a program for the detection, prevention, and suppression of

money laundering and related financial crimes.<sup>4</sup> As part of the program, the Secretary is to make and track grants to grant recipients and provide for technical assistance and training.<sup>5</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Evidence was sufficient to support defendant's convictions for eight counts of money laundering, where amount of money defendant embezzled from his employer and placed in his personal account was greater than the amount of the monetary transactions charged in the money laundering counts. [Cal. Penal Code § 186.10\(a\)](#). [People v. Bolding](#), 34 Cal. App. 5th 1037, 246 Cal. Rptr. 3d 760 (4th Dist. 2019), as modified on denial of reh'g, (May 24, 2019).

## [END OF SUPPLEMENT]

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### Footnotes

- |   |  |
|---|--|
| 1 | <a href="#">§ 60.</a>  |
| 2 | <a href="#">§ 65.</a>  |
| 3 | <a href="#">U.S. v. Wood</a> , 117 Fed. Appx. 44 (10th Cir. 2004). |
| 4 | <a href="#">31 U.S.C.A. § 5351(a).</a>                             |
| 5 | <a href="#">31 U.S.C.A. § 5351(b).</a>                             |

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## 53A Am. Jur. 2d Money § 60

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### V. Criminal Offenses Involving Money


#### A. Money Laundering

#### 2. Laundering of Monetary Instruments Under 18 U.S.C.A § 1956

## § 60. Laundering of monetary instruments, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  4

### A.L.R. Library

[What is considered property "involved in" money laundering offense, and thus subject to civil or criminal forfeiture, for purposes of Money Laundering Control Act \(18 U.S.C.A. sec. 981\(a\)\(1\)\(A\) and 982\(a\)\(1\)\), 135 A.L.R. Fed. 367](#)

[Validity, construction, and application of 18 U.S.C.A. sec. 1956, which criminalizes money laundering, 121 A.L.R. Fed. 525](#)

Laundering of monetary instruments is a federal crime.<sup>1</sup> Under the applicable statute, one who, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity with the intent to promote the carrying on of specified unlawful activity;<sup>2</sup> or with intent to engage in conduct constituting a violation of certain provisions of the Internal Revenue Code of 1986;<sup>3</sup> or knowing that the transaction is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity;<sup>4</sup> or to avoid a transaction reporting requirement under state or federal law<sup>5</sup> is subject to a fine, imprisonment, or both as specified by statute.<sup>6</sup>

The term "proceeds" means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.<sup>7</sup>

**Observation:**

In 2009, Congress amended the statute by defining the term "proceeds," which had previously been left undefined in the statute. The addition of this definition was a response to the Supreme Court's holding<sup>8</sup> that the term "proceeds" was limited to profits.

Under the statute, one who transports, transmits, or transfers or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States with the intent to promote the carrying on of specified unlawful activity;<sup>9</sup> or knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity;<sup>10</sup> or to avoid a transaction reporting requirement under state or federal law<sup>11</sup> is subject to a fine, imprisonment, or both as specified by statute.<sup>12</sup> Furthermore, under the statute, whoever, with the intent to promote the carrying on of specified unlawful activity;<sup>13</sup> to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity;<sup>14</sup> or to avoid a transaction reporting requirement under state or federal law,<sup>15</sup> conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, is subject to fine or imprisonment or both, as specified by statute.<sup>16</sup>

**Definition:**

For purposes of specific provisions of the statute,<sup>17</sup> the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a federal official authorized to investigate or prosecute violations of the statute.<sup>18</sup>

Funds laundered need not be traceable to a specific illegal transaction to support a money-laundering conviction.<sup>19</sup> Rather, it is enough if the government shows that the transaction involved some funds which were derived from some illegal activity.<sup>20</sup> Digital currency allegedly used by a defendant and his coconspirators in financial transactions arising on a website that facilitated the anonymous online sale of various sorts of illicit goods and services, including narcotics and malicious computer software, constituted "funds" within the meaning of the money laundering statute, and thus, an allegation that a conspiracy existed between defendant and one or more others, the object of which was to engage in money laundering by using digital currency to move or

transfer the proceeds of unlawful activity, was sufficient to support an indictment for a money laundering conspiracy. The digital currency at issue had value in that it could be used to pay for things.<sup>21</sup> Even one transaction can be enough for a conviction.<sup>22</sup>

**Observation:**

As far as the money-laundering statute is concerned, laundering someone else's illegal drug proceeds is just as bad as laundering one's own.<sup>23</sup>

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Footnotes

- 1 18 U.S.C.A. § 1956.
- 2 18 U.S.C.A. § 1956(a)(1)(A)(i).  
The term "specified unlawful activity," for purposes of the statute, is defined in 18 U.S.C.A. § 1956(c)(7).
- 3 18 U.S.C.A. § 1956(a)(1)(A)(ii).
- 4 18 U.S.C.A. § 1956(a)(1)(B)(i).
- 5 18 U.S.C.A. § 1956(a)(1)(B)(ii).
- 6 18 U.S.C.A. § 1956(a)(1).
- 7 18 U.S.C.A. § 1956(c)(9).
- 8 U.S. v. Santos, 553 U.S. 507, 128 S. Ct. 2020, 170 L. Ed. 2d 912 (2008).
- 9 18 U.S.C.A. § 1956(a)(2)(A).
- 10 18 U.S.C.A. § 1956(a)(2)(B)(i).
- 11 18 U.S.C.A. § 1956(a)(2)(B)(ii).
- 12 18 U.S.C.A. § 1956(a)(2).
- 13 18 U.S.C.A. § 1956(a)(3)(A).
- 14 18 U.S.C.A. § 1956(a)(3)(B).
- 15 18 U.S.C.A. § 1956(a)(3)(C).
- 16 18 U.S.C.A. § 1956(a)(3).
- 17 18 U.S.C.A. § 1956(a)(2), (3).
- 18 18 U.S.C.A. § 1956(a)(3).
- 19 U.S. v. Smith, 223 F.3d 554, 54 Fed. R. Evid. Serv. 970 (7th Cir. 2000).
- 20 U.S. v. Smith, 223 F.3d 554, 54 Fed. R. Evid. Serv. 970 (7th Cir. 2000).
- 21 U.S. v. Ulbricht, 31 F. Supp. 3d 540 (S.D. N.Y. 2014).  
As to virtual currency, such as Bitcoin, see § 6.
- 22 U.S. v. Blankenship, 382 F.3d 1110 (11th Cir. 2004).
- 23 U.S. v. Magluta, 418 F.3d 1166 (11th Cir. 2005) (holding that there is no help-thy-neighbor exception to the money laundering statute).

## 53A Am. Jur. 2d Money § 61

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### V. Criminal Offenses Involving Money


#### A. Money Laundering

#### 2. Laundering of Monetary Instruments Under 18 U.S.C.A § 1956

## § 61. Constitutionality of money laundering statute

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

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### A.L.R. Library

[Validity, construction, and application of 18 U.S.C.A. sec. 1956, which criminalizes money laundering, 121 A.L.R. Fed. 525](#)

The statute prohibiting money laundering<sup>1</sup> has withstood constitutional challenge on the grounds that it is vague.<sup>2</sup> For example, the provision of the statute prohibiting money laundering in support of acts of terrorism<sup>3</sup> was not unconstitutionally vague on its face, in violation of the Fifth Amendment, in its use of the phrase "an offense against a foreign nation involving ... murder [or] destruction of property."<sup>4</sup> In addition, the provision was not unconstitutionally overbroad as applied to a defendant in violation of the First Amendment; the statute, which criminalized the act of transporting funds across U.S. borders with the intent of promoting specified criminal activities, criminalized unprotected conduct with no apparent impact on free expression.<sup>5</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Superseding indictment charging defendants with conspiracy, Travel Act violations, and money laundering, based on allegations that defendants operated website which published prostitution advertisements, did not attack protected editorial functions or

protected business advertising practices in violation of First Amendment speech protections, where indictment alleged that defendants purposely sought out opportunities to increase prostitution advertising on website, that defendants intentionally identified prostitutes, created free ads for them, and used those ads to try to secure future business, that one defendant directed project and other defendants participated in meetings where project was on agenda, and that defendants sought to expand their traffic through prostitution website. [U.S. Const. Amend. 1](#); [18 U.S.C.A. §§ 371, 1952\(a\)\(3\)\(A\), 1956\(a\)\(1\)\(B\)\(i\), 1956\(a\)\(2\)\(A\), 1956\(h\), 1957\(a\)](#); [19 U.S.C.A. § 1956\(a\)\(2\)\(B\)\(i\)](#). [United States v. Lacey](#), 423 F. Supp. 3d 748 (D. Ariz. 2019).

**[END OF SUPPLEMENT]**

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Footnotes

- 1 [18 U.S.C.A. § 1956](#).
- 2 [U.S. v. Ortiz](#), 738 F. Supp. 1394 (S.D. Fla. 1990).
- 3 [18 U.S.C.A. § 1956\(c\)\(7\)\(B\)\(ii\)](#).
- 4 [U.S. v. Awan](#), 459 F. Supp. 2d 167 (E.D. N.Y. 2006), [aff'd](#), 384 Fed. Appx. 9 (2d Cir. 2010).
- 5 [U.S. v. Awan](#), 459 F. Supp. 2d 167 (E.D. N.Y. 2006), [aff'd](#), 384 Fed. Appx. 9 (2d Cir. 2010).

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## 53A Am. Jur. 2d Money § 62

American Jurisprudence, Second Edition | May 2021 Update

### Money

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### V. Criminal Offenses Involving Money


#### A. Money Laundering

#### 2. Laundering of Monetary Instruments Under 18 U.S.C.A § 1956

## § 62. Nature and purpose of money laundering statute

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  4

### A.L.R. Library

[Validity, construction, and application of 18 U.S.C.A. sec. 1956, which criminalizes money laundering, 121 A.L.R. Fed. 525](#)

The money-laundering statute is construed as a concealment statute,<sup>1</sup> not a spending statute.<sup>2</sup> The money laundering statute does not criminalize the mere spending or investing of illegally obtained assets. Instead, at least one purpose for the expenditure must be to conceal or disguise the assets.<sup>3</sup>

Furthermore, the money-laundering statute interdicts only the financial transactions, not the anterior criminal conduct that yielded the funds allegedly laundered.<sup>4</sup> Indeed, the underlying activity supporting a money-laundering conviction must be separate from the actual laundering.<sup>5</sup> Thus, the proceeds used for money laundering must be proceeds from a different illegal activity than the illegal activity of money laundering itself.<sup>6</sup>

The purpose of the money-laundering statute<sup>7</sup> is to—

- reach commercial transactions intended, at least in part, to disguise (1) the relationship of the item purchased with the person providing the proceeds, and (2) that the proceeds used to make the purchase were obtained from illegal activities.<sup>8</sup>
- outlaw the structuring of financial transactions so as to avoid currency reporting requirements or to conceal the source of the funds.<sup>9</sup>
- outlaw the promotion of unlawful activity through financial transactions involving the proceeds of a specified unlawful activity.<sup>10</sup>
- close a gap in the criminal law with respect to the postcrime hiding of the ill-gotten gains.<sup>11</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Money laundering is the process by which criminals, and, most notably, drug dealers, disguise the origin of money obtained illegally from activities such as drug dealing, prostitution, investment fraud, gambling, or racketeering. 18 U.S.C.A. § 1956. *Medina-Rodriguez v. \$3,072,266.59 in United States Currency*, 471 F. Supp. 3d 465 (D.P.R. 2020).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 U.S. v. Shepard, 396 F.3d 1116 (10th Cir. 2005).
- 2 U.S. v. Heid, 651 F.3d 850 (8th Cir. 2011); U.S. v. Slagg, 651 F.3d 832 (8th Cir. 2011); U.S. v. Shepard, 396 F.3d 1116 (10th Cir. 2005).  
Not every dollar spent in every transaction that can be traced to a specified criminal activity violates the statute prohibiting money laundering; to so interpret the statute would convert the money laundering statute into a money spending statute. U.S. v. Cessa, 785 F.3d 165 (5th Cir. 2015), cert. denied, 136 S. Ct. 522, 193 L. Ed. 2d 411 (2015).
- 3 U.S. v. Hall, 434 F.3d 42 (1st Cir. 2006).
- 4 U.S. v. Castellini, 392 F.3d 35, 65 Fed. R. Evid. Serv. 1321 (1st Cir. 2004).
- 5 U.S. v. Awada, 425 F.3d 522 (8th Cir. 2005).  
The money-laundering statute was intended to be a separate crime distinct from the underlying offense that generated the money. U.S. v. Johnson, 971 F.2d 562, 36 Fed. R. Evid. Serv. 425 (10th Cir. 1992).
- 6 U.S. v. Castellini, 392 F.3d 35, 65 Fed. R. Evid. Serv. 1321 (1st Cir. 2004).
- 7 § 60.
- 8 U.S. v. Pizano, 421 F.3d 707 (8th Cir. 2005).
- 9 U.S. v. Iacaboni, 363 F.3d 1 (1st Cir. 2004).  
As to the currency reporting requirements, generally, see § 67.
- 10 U.S. v. Iacaboni, 363 F.3d 1 (1st Cir. 2004).  
As to promotional money laundering, generally, see § 60.
- 11 U.S. v. Castellini, 392 F.3d 35, 65 Fed. R. Evid. Serv. 1321 (1st Cir. 2004).

## 53A Am. Jur. 2d Money § 63

American Jurisprudence, Second Edition | May 2021 Update

### Money

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### V. Criminal Offenses Involving Money


#### A. Money Laundering

#### 2. Laundering of Monetary Instruments Under 18 U.S.C.A § 1956

## § 63. Elements of money laundering

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#) 4

There are four elements to the offense of violating the transaction (concealment) provision<sup>1</sup> of the money laundering statute:<sup>2</sup>

- (1) the defendant conducted, or attempted to conduct a financial transaction which in any way or degree affected interstate commerce or foreign commerce;
- (2) the financial transaction involved proceeds of illegal activity;
- (3) the defendant knew the property represented proceeds of some form of unlawful activity; and
- (4) the defendant conducted or attempted to conduct the financial transaction knowing the transaction was designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity.

To establish the element of concealment money laundering requires a showing that the defendant knew that the transaction was designed, in whole or part, to conceal or disguise the nature, location, source, ownership, or control of proceeds of unlawful activity, the government must prove a specific intent to conceal.<sup>3</sup> The transaction provision of the money laundering statute requires the existence of two mental states: (1) the defendant's knowledge that the money represented the proceeds of some form of unlawful activity, and (2) the defendant's knowledge that the transaction was designed to conceal or disguise a specified attribute of money. For the design element, the government must show that the concealment of a specified attribute of the money is an intended aim of the transaction.<sup>4</sup>



To convict a defendant under the federal money laundering statute that prohibits international transportation of the proceeds of unlawful activity required the government to prove that the defendant (1) attempted to transport funds from the United States to another country, (2) knew that these funds represented the proceeds of some form of unlawful activity, e.g., drug trafficking, and (3) knew that such transportation was designed to conceal or disguise the nature, the location, the source, the ownership, or the control of the funds.<sup>5</sup>

"Promotional money laundering" is using funds from an unlawful activity to promote the carrying out of said unlawful activity.<sup>6</sup> To establish the offense of promotional money laundering,<sup>7</sup> the government must demonstrate that:<sup>8</sup>

- (1) the defendant conducted or attempted to conduct a financial transaction;
  - (2) the defendant knew that the funds involved in the transaction represented the proceeds of illicit activity;
  - (3) the funds involved were in fact the proceeds of unlawful activity; and
  - (4) the defendant conducted the financial transaction with the intent to promote the specified unlawful activity.
- To satisfy the intent requirement for a conviction under the money laundering promotion statute, the government must show the transaction at issue was conducted with the intent to promote the carrying on of a specified unlawful activity. It is not enough to show that a money launderer's actions resulted in promoting the carrying on of specified unlawful activity and instead the evidence must show not only that the defendant's conduct promoted a specified unlawful activity but also that the defendant engaged in it with the intent to further the progress of that activity.<sup>9</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Defendant could be convicted of concealment money laundering without healthcare checks being deposited in bank accounts as part of healthcare fraud scheme, since crime was committed moment that conspirators submitted false claims for payment. [18 U.S.C.A. §§ 1347\(a\), 1956\(a\)\(1\). United States v. Chavez, 951 F.3d 349 \(6th Cir. 2020\).](#)

Defendant's access of safety deposit box on particular day constituted transaction for purposes of concealment money laundering; mere fact that defendant did not deposit or withdraw funds from box on that day was irrelevant. [18 U.S.C.A. § 1956\(a\)\(1\)\(B\)\(i\). United States v. Gonzales, 918 F.3d 808 \(10th Cir. 2019\).](#)

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [§ 60.](#)
- 2 [U.S. v. Kivanc, 714 F.3d 782, 85 Fed. R. Serv. 3d 863 \(4th Cir. 2013\); U.S. v. Slagg, 651 F.3d 832 \(8th Cir. 2011\).](#)
- 3 [U.S. v. Kivanc, 714 F.3d 782, 85 Fed. R. Serv. 3d 863 \(4th Cir. 2013\).](#)
- 4 [U.S. v. Heid, 651 F.3d 850 \(8th Cir. 2011\).](#)
- 5 [Regalado Cuellar v. U.S., 553 U.S. 550, 128 S. Ct. 1994, 170 L. Ed. 2d 942 \(2008\).](#)
- 6 [U.S. v. Azmat, 805 F.3d 1018, 98 Fed. R. Evid. Serv. 1257 \(11th Cir. 2015\), cert. denied, 136 S. Ct. 2012, 195 L. Ed. 2d 222 \(2016\).](#)

7 § 60.  
8 U.S. v. *Bollin*, 264 F.3d 391, 57 Fed. R. Evid. Serv. 429 (4th Cir. 2001) (holding also that the financial  
transaction must have at least a de minimis effect on interstate commerce); U.S. v. *Miles*, 360 F.3d 472 (5th  
Cir. 2004); U.S. v. *Febus*, 218 F.3d 784 (7th Cir. 2000), as amended on denial of reh'g and reh'g en banc,  
(Oct. 17, 2000); U.S. v. *Johnson*, 440 F.3d 1286 (11th Cir. 2006).  
9 U.S. v. *Stanford*, 823 F.3d 814 (5th Cir. 2016), cert. denied, 2016 WL 5851763 (U.S. 2016).

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## 53A Am. Jur. 2d Money § 64

American Jurisprudence, Second Edition | May 2021 Update

### Money

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### V. Criminal Offenses Involving Money


#### A. Money Laundering

#### 2. Laundering of Monetary Instruments Under 18 U.S.C.A § 1956

## § 64. Evidence of intent and concealment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  4

### A.L.R. Library

[Validity, construction, and application of 18 U.S.C.A. sec. 1956, which criminalizes money laundering, 121 A.L.R. Fed. 525](#)

Under the money-laundering statute,<sup>1</sup> knowledge that funds are the proceeds of some illegal activity may be actual or inferred.<sup>2</sup> Direct evidence of intent is not necessary to support a money-laundering conviction.<sup>3</sup> Knowledge, as an element of a money laundering offense, that the transaction involves profits of unlawful activity, is provable, as knowledge must almost always be proved, by circumstantial evidence.<sup>4</sup>

The government must show concealment, whether from direct evidence or circumstantial evidence.<sup>5</sup> An inference to conceal under the money-laundering statute may be shown or supported by evidence of—

— depositing the illegal proceeds into the bank account of a legitimate business.<sup>6</sup>

— highly irregular features of the transaction.<sup>7</sup>

— using third parties to conceal the real owner.<sup>8</sup>

- statements by a defendant probative of intent to conceal.<sup>9</sup>
- unusual secrecy surrounding the transaction.<sup>10</sup>
- structuring the transaction in a way to avoid attention.<sup>11</sup>
- a series of unusual financial moves in the transaction.<sup>12</sup>
- expert testimony on practices of criminals.<sup>13</sup>
- the creation and use of sham businesses.<sup>14</sup>

The evidence of concealment supporting a conviction for money laundering must be substantial.<sup>15</sup> However, actions that are merely suspicious and do not provide substantial evidence of a design to conceal may not alone support a conviction for money laundering,<sup>16</sup> at least where the defendant offered legitimate reasons for the steps at issue that, on their face, have some force.<sup>17</sup> Thus, the prohibition of international transportation of the proceeds of unlawful activity, requiring proof that such transportation was designed to conceal or disguise the specified attributes of the illegally obtained funds designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the funds, could not be satisfied by proving that the defendant merely hid funds during transportation, even if substantial efforts had been expended to conceal the money. The evidence suggested that the secretive aspects of the transportation were employed to facilitate the transportation but not necessarily that secrecy was the purpose of the transportation.<sup>18</sup>

Proof that the transportation was designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the funds does not require proof that the defendant attempted to create the appearance of legitimate wealth.<sup>19</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Attorney's conduct in making concealed payments into the jail or prison commissary accounts for drug dealers for multi-state marijuana trafficking organization, using money that was derived from the trafficking and that was deposited into his law firm's bank account before he made the payments, supported defendant's conviction for concealment money laundering, even if on other occasions attorney had made similar payments to other inmates with his own money. 18 U.S.C.A. § 1956(a)(1)(B)(i). *United States v. Farrell*, 921 F.3d 116 (4th Cir. 2019).

Sufficient evidence supported jury's finding that defendant purchased automobiles in other people's names in order to conceal proceeds of drug sales, as required to support conviction for money laundering, including wealth of physical and testimonial evidence showing that defendant had numerous vehicles titled in other people's names, that he went to great lengths to conceal ownership of such vehicles, and that he failed to file tax returns. *United States v. Bennett*, 738 Fed. Appx. 140 (4th Cir. 2018).

There was sufficient evidence to support defendant's conviction for concealment money laundering, in light of evidence that co-conspirator received methamphetamine from defendant, that defendant gave third party's name and bank account information to co-conspirator, that co-conspirator shared this information with his girlfriend, that she deposited proceeds from defendant's methamphetamine conspiracy into third party's account for co-conspirator, and that funds were withdrawn from account at another branch next day. 18 U.S.C.A. § 1956(a)(1)(B)(i). *United States v. Maes*, 961 F.3d 366 (5th Cir. 2020), as revised, (June 2, 2020).

Evidence was sufficient to support convictions for conspiracy to commit money laundering and aiding and abetting money laundering; defendant heard co-defendant provide specific details of the money laundering deal, such as the drug cash would be exchanged for bank cashier's checks and the payee name on the checks would be changed every month, in Cantonese, his native language, defendant then confirmed that the check would be real, that the transaction would have a smooth start, and that they would conduct business with sincere hearts and safely, and defendant showed up on the day of the transaction. [United States v. Hua Leung](#), 787 Fed. Appx. 925 (9th Cir. 2019).

There was sufficient evidence for jury to find that defendant knew that illegal proceeds came from health-care fraud to convict him of money laundering, in light of evidence that defendant cashed or deposited more than 150 checks over six years, that when he had more than one check to cash on given day, he would travel to multiple banks to cash them at account-holder's bank, that he negotiated check in question after his ex-girlfriend told him that she had declined to cash any more checks because it did not seem right to her, and after his interview with IRS agents about sham corporation involved in the fraud, that he listed himself as corporation's president, and that depositors to sham corporations included health-care related entities. [18 U.S.C.A. § 1956\(a\)\(1\)\(B\)\(i\)](#). [United States v. Pogolian](#), 754 Fed. Appx. 545 (9th Cir. 2018).

Evidence allowed inference of defendant's knowledge that the proceeds of the transactions were derived from unlawful activity, in prosecution for money laundering; undercover Drug Enforcement Administration (DEA) agent testified that he told co-defendant, with whom defendant closely coordinated, that the money came from an international cocaine deal. [18 U.S.C.A. § 1956\(a\)\(2\)\(A\), \(a\)\(3\)\(A, B\)](#). [United States v. Paniry](#), 711 Fed. Appx. 387 (9th Cir. 2017), cert. denied, 2018 WL 942692 (U.S. 2018).

Bankruptcy trustee for estate of Ponzi scheme perpetrator sufficiently alleged that assets which scheme profiteer's wife allegedly fraudulently transferred out of reach of trustee were proceeds of a predicate offense, as could in turn establish predicate offense of money laundering, in trustee's Racketeer Influenced and Corrupt Organizations Act (RICO) action against wife, where trustee asserted that transfer of assets constituted bankruptcy fraud. [18 U.S.C.A. §§ 152\(7\), 1956, 1962](#). [Berman, Trustee for Estate of Michael S. Goldberg, LLC v. LaBonte](#), 622 B.R. 503 (D. Conn. 2020).

Reasonable jury did not have sufficient evidence of concealment to support finding of guilt beyond reasonable doubt as to charges for international money laundering based on concealment of unlawful activity, specifically, defendant's drug crimes; government alleged that by transferring money from his business account to his personal account and then to his family overseas, defendant was concealing that money was proceeds from his drug crimes, based on vague notations that money was used to purchase a bakery and apartment, but there was evidence that his family was in need of financial assistance and that bakery and apartment were purchased for their use. [18 U.S.C.A. § 1956\(a\)\(1\)\(B\)\(i\)](#); Comprehensive Drug Abuse Prevention and Control Act of 1970 § 401, [21 U.S.C.A. § 841\(a\)\(1\)](#). [United States v. Nasher-Alneam](#), 395 F. Supp. 3d 741 (S.D. W. Va. 2019).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [§ 60.](#)
- 2 [U.S. v. Turner](#), 400 F.3d 491, 66 Fed. R. Evid. Serv. 797 (7th Cir. 2005).
- 3 [U.S. v. Dovalina](#), 262 F.3d 472 (5th Cir. 2001).
- 4 [U.S. v. Cessa](#), 785 F.3d 165 (5th Cir. 2015), cert. denied, 136 S. Ct. 522, 193 L. Ed. 2d 411 (2015).
- 5 [U.S. v. Heid](#), 651 F.3d 850 (8th Cir. 2011); [U.S. v. Slagg](#), 651 F.3d 832 (8th Cir. 2011).
- 6 [U.S. v. Richardson](#), 658 F.3d 333 (3d Cir. 2011); [U.S. v. Shepard](#), 396 F.3d 1116 (10th Cir. 2005); [U.S. v. Magluta](#), 418 F.3d 1166 (11th Cir. 2005).
- 7 [U.S. v. Richardson](#), 658 F.3d 333 (3d Cir. 2011).

- 8 U.S. v. Hall, 434 F.3d 42 (1st Cir. 2006); U.S. v. Richardson, 658 F.3d 333 (3d Cir. 2011); U.S. v. Esterman, 324 F.3d 565 (7th Cir. 2003); U.S. v. Shepard, 396 F.3d 1116 (10th Cir. 2005); U.S. v. Magluta, 418 F.3d 1166 (11th Cir. 2005).
- 9 U.S. v. Hall, 434 F.3d 42 (1st Cir. 2006); U.S. v. Richardson, 658 F.3d 333 (3d Cir. 2011); U.S. v. Esterman, 324 F.3d 565 (7th Cir. 2003); U.S. v. Magluta, 418 F.3d 1166 (11th Cir. 2005).
- 10 U.S. v. Hall, 434 F.3d 42 (1st Cir. 2006); U.S. v. Richardson, 658 F.3d 333 (3d Cir. 2011); U.S. v. Esterman, 324 F.3d 565 (7th Cir. 2003); U.S. v. Magluta, 418 F.3d 1166 (11th Cir. 2005).
- 11 U.S. v. Richardson, 658 F.3d 333 (3d Cir. 2011); U.S. v. Esterman, 324 F.3d 565 (7th Cir. 2003); U.S. v. Magluta, 418 F.3d 1166 (11th Cir. 2005).  
One of the factors for determining whether a defendant's behavior constitutes "concealment" for purposes of the money laundering statute is whether the defendant engages in unnecessary transactions to add extra degrees of separation between the defendant and the source of the funds. U.S. v. Blankenship, 382 F.3d 1110 (11th Cir. 2004).
- 12 U.S. v. Richardson, 658 F.3d 333 (3d Cir. 2011); U.S. v. Esterman, 324 F.3d 565 (7th Cir. 2003); U.S. v. Magluta, 418 F.3d 1166 (11th Cir. 2005).
- 13 U.S. v. Richardson, 658 F.3d 333 (3d Cir. 2011); U.S. v. Magluta, 418 F.3d 1166 (11th Cir. 2005).
- 14 U.S. v. Bolden, 325 F.3d 471 (4th Cir. 2003).
- 15 U.S. v. Johnson, 440 F.3d 1286 (11th Cir. 2006).
- 16 U.S. v. Shepard, 396 F.3d 1116 (10th Cir. 2005).
- 17 U.S. v. Davidson, 175 Fed. Appx. 399 (2d Cir. 2006).
- 18 Regalado Cuellar v. U.S., 553 U.S. 550, 128 S. Ct. 1994, 170 L. Ed. 2d 942 (2008).
- 19 Regalado Cuellar v. U.S., 553 U.S. 550, 128 S. Ct. 1994, 170 L. Ed. 2d 942 (2008).

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## 53A Am. Jur. 2d Money § 65

American Jurisprudence, Second Edition | May 2021 Update

### Money

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### V. Criminal Offenses Involving Money


#### A. Money Laundering

#### 3. Monetary Transactions in Criminally Derived Property Under 18 U.S.C.A. § 1957

## § 65. Money transactions in criminally derived property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  5

### A.L.R. Library

[What is considered property "involved in" money laundering offense, and thus subject to civil or criminal forfeiture, for purposes of Money Laundering Control Act \(18 U.S.C.A. sec. 981\(a\)\(1\)\(A\) and 982\(a\)\(1\)\), 135 A.L.R. Fed. 367](#)

Federal law imposes criminal sanctions<sup>1</sup> upon anyone who knowingly engages or attempts to engage in a monetary transaction in criminally derived property if all of the following conditions are met:

- (1) The property is of a value greater than \$10,000;<sup>2</sup>
- (2) The property is derived from one of the specified unlawful activities set forth in the money-laundering statute;<sup>3</sup> and
- (3) The offense takes place in the United States or its special maritime and territorial jurisdiction, or the defendant is a United States person as defined by statute.<sup>4</sup>

The government does not have to prove that the defendant knew that the offense was a specified unlawful activity.<sup>5</sup>

Congress enacted the statute<sup>6</sup> to criminalize the means which criminals use to cleanse their ill-gotten gains.<sup>7</sup>

The statute is not unconstitutionally vague on its face as would violate the Fifth Amendment.<sup>8</sup> In particular, the definition of the term "money transaction" in the statute did not criminalize a defendant's innocent act of depositing a check into his own bank account, and thus, the statute was not unconstitutionally vague or overbroad for purposes of the defendant's prosecution for aiding and abetting money laundering. Under the statute, criminal liability only attaches if the government proves beyond a reasonable doubt that the defendant knowingly engaged in such transaction involving criminally derived property of a value greater than \$10,000.<sup>9</sup>

Criminal liability attaches under the statute where (1) defendant knowingly engages or attempts to engages in a monetary transaction, (2) knowing that the transaction involved criminal property, (3) the property's value exceeds \$10,000, and (4) the property derives from specified unlawful activity.<sup>10</sup> The knowledge inquiry in a prosecution for money laundering looks only to whether the property was derived from an unlawful activity; the mens rea element of the offense does not extend to whether defendant knowingly laundered the funds, only whether defendant knew the funds were illicit and engaged in a financial transaction with them regardless.<sup>11</sup>

The term "criminally derived property" is defined as any property constituting, or derived from, proceeds obtained from a criminal offense.<sup>12</sup> To support a charge of money laundering, there must have been a discrete predicate crime which produced proceeds in acts distinct from the conduct that constitutes money laundering.<sup>13</sup> Because money laundering is a separate offense from the underlying predicate offense, the primary issue in a money laundering charge involves determining when the predicate crime becomes a completed offense after which money laundering can occur.<sup>14</sup> The government must show that the criminally derived funds are derived from an already completed offense, or a completed phase on an ongoing offense.<sup>15</sup>

The money laundering statute requires only a de minimis effect on interstate commerce.<sup>16</sup> Furthermore, the statute does not require—

— that the government meticulously trace the funds involved in a money-laundering offense to a criminal source<sup>17</sup> or prove that the funds could not have come from a legitimate source.<sup>18</sup>

— that the case involve organized crime and/or large-scale drug trafficking.<sup>19</sup>

— that the government prove any concealment<sup>20</sup> or disguise of the transaction.<sup>21</sup>

— an intent to conceal, to hide, or to somehow purposefully make stolen money appear to be "clean."<sup>22</sup>

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#### Footnotes

1 18 U.S.C.A. § 1957(b).

2 18 U.S.C.A. § 1957(a).

3 18 U.S.C.A. § 1957(a), (f)(3).

Where the proceeds have been deposited in a financial institution and cannot be traced to any particular transaction or distinguished from any other funds deposited in the account, the government is not required to show that funds withdrawn from a defendant's account could not possibly have come from any source other than the unlawful activity. *U.S. v. Johnson*, 971 F.2d 562, 36 Fed. R. Evid. Serv. 425 (10th Cir. 1992).

4 18 U.S.C.A. § 1957(d).

5 18 U.S.C.A. § 1957(c).

6 18 U.S.C.A. § 1957.



- 7 U.S. v. Butler, 211 F.3d 826 (4th Cir. 2000).  
8 U.S. v. Silver, 117 F. Supp. 3d 461 (S.D. N.Y. 2015).  
9 U.S. v. Bazazpour, 690 F.3d 796 (6th Cir. 2012).  
10 U.S. v. French, 748 F.3d 922 (9th Cir. 2014); U.S. v. Battles, 745 F.3d 436, 93 Fed. R. Evid. Serv. 1116,  
88 Fed. R. Serv. 3d 347 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 355, 190 L. Ed. 2d 249 (2014); U.S. v.  
Huff, 641 F.3d 1228 (10th Cir. 2011).  
11 U.S. v. Alaniz, 726 F.3d 586 (5th Cir. 2013).  
12 18 U.S.C.A. § 1957(f)(2).  
13 U.S. v. Greenidge, 495 F.3d 85 (3d Cir. 2007).  
14 U.S. v. Kerley, 784 F.3d 327, 97 Fed. R. Evid. Serv. 357 (6th Cir. 2015).  
15 U.S. v. Kerley, 784 F.3d 327, 97 Fed. R. Evid. Serv. 357 (6th Cir. 2015).  
16 U.S. v. Vega, 813 F.3d 386 (1st Cir. 2016).  
17 U.S. v. Shafer, 608 F.3d 1056 (8th Cir. 2010); U.S. v. Mooney, 401 F.3d 940 (8th Cir. 2005), *on reh'g en*  
*banc in part*, 425 F.3d 1093 (8th Cir. 2005); U.S. v. Dazey, 403 F.3d 1147, 66 Fed. R. Evid. Serv. 1194 (10th  
Cir. 2005).  
18 U.S. v. Dazey, 403 F.3d 1147, 66 Fed. R. Evid. Serv. 1194 (10th Cir. 2005).  
19 U.S. v. Wood, 117 Fed. Appx. 44 (10th Cir. 2004).  
20 United States v. Capra, 652 Fed. Appx. 632 (10th Cir. 2016);  
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21 U.S. v. Abboud, 438 F.3d 554, 2006 FED App. 0066P (6th Cir. 2006).  
22 U.S. v. Wood, 117 Fed. Appx. 44 (10th Cir. 2004).

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## 53A Am. Jur. 2d Money § 66

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### Money

Eleanor L. Grossman, J.D. and Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.

### V. Criminal Offenses Involving Money


#### A. Money Laundering

#### 3. Monetary Transactions in Criminally Derived Property Under 18 U.S.C.A. § 1957

## § 66. Safe harbor provision of 18 U.S.C.A. § 1957

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### West's Key Number Digest

West's Key Number Digest, [Currency Regulation](#)  5

### A.L.R. Library

[Construction and Application of Safe Harbor Provision of 18 U.S.C.A. s1957\(f\)\(1\), Exempting Transfers of Fees and Funds that Preserve Right to Legal Representation Guaranteed by Sixth Amendment from Criminal Prosecution for Money Laundering Under 18 U.S.C.A. s1957\(a\), 81 A.L.R. Fed. 2d 321](#)

### Law Reviews and Other Periodicals

Levy, et al., Getting Paid and Staying Paid: How Alternate Charges in Criminal Tax Cases Can Put Your Fees and Client's Assets at Risk of Forfeiture, 2012 A.B.A.-Tax. CLE 0915009 (2012)

The term "monetary transaction" does not include any transaction necessary to preserve a person's right to representation as guaranteed by the Sixth Amendment.<sup>1</sup> This is known as the "safe harbor" provision.<sup>2</sup> It has been held that this safe harbor provision is coterminous with the Sixth Amendment, and therefore, if Sixth Amendment rights do not attach to the particular circumstances involved, the safe harbor does not apply.<sup>3</sup> Furthermore, this exemption is limited to attorney's fees paid for

representation guaranteed by the Sixth Amendment in a criminal proceeding and does not extend to attorney's fees paid for other purposes.<sup>4</sup>

The safe harbor provision is an affirmative defense, the applicability of which defendants will bear the burden of proving at trial, and therefore, need not be negated by the government in an indictment.<sup>5</sup>

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Footnotes

- 1 18 U.S.C.A. § 1957(f)(1).
- 2 U.S. v. Blair, 661 F.3d 755, 81 A.L.R. Fed. 2d 635 (4th Cir. 2011).
- 3 U.S. v. Blair, 661 F.3d 755, 81 A.L.R. Fed. 2d 635 (4th Cir. 2011) (further holding that an attorney's use of drug proceeds to secure counsel for individuals charged with drug distribution conspiracy did not fall under the safe harbor provision; the attorney had no Sixth Amendment right to spend another person's money to hire counsel for other individuals).
- 4 U.S. v. Velez, 586 F.3d 875 (11th Cir. 2009).
- 5 U.S. v. Reece, 2013 WL 5234227 (W.D. La. 2013).

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## 53A Am. Jur. 2d Money V B Refs.

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### V. Criminal Offenses Involving Money

### B. Records and Reports on Monetary Instruments Transactions

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West's Key Number Digest, Banks and Banking  188, 188.5

West's Key Number Digest, [Currency Regulation](#)  7, 8

### A.L.R. Library

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A.L.R. Index, Money or Cash

West's A.L.R. Digest, Banks and Banking  188, 188.5

West's A.L.R. Digest, [Currency Regulation](#)  7, 8

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## 53A Am. Jur. 2d Money § 67

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#### V. Criminal Offenses Involving Money

##### B. Records and Reports on Monetary Instruments Transactions

### § 67. Records and reports on monetary instruments transactions, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, Banks and Banking  188, 188.5

West's Key Number Digest, [Currency Regulation](#)  7, 8

#### A.L.R. Library

[Venue for currency reporting offense under Currency and Foreign Transactions Reporting Act \(CFTRA\) \(31 U.S.C.A. secs. 5311 et seq.\), 113 A.L.R. Fed. 639](#)

[Forfeiture, under 31 U.S.C.A. sec. 5317\(c\), of monetary instruments transported into or out of United States without reporting as required by 31 U.S.C.A. sec. 5316\(a\), 90 A.L.R. Fed. 222](#)

[Validity, construction, and effect of domestic currency transaction reporting requirement based upon 31 U.S.C.A. sec. 5313\(a\), 89 A.L.R. Fed. 770](#)

[Criminal liability for failure to report export or import of monetary instrument as required by provision of Currency and Foreign Transactions Reporting Act \(31 U.S.C.A. sec. 1101\), 59 A.L.R. Fed. 438](#)

In response to the increasing use of banks and other institutions as financial intermediaries by persons engaged in criminal activity,<sup>1</sup> Congress enacted the Federal Currency and Foreign Transactions Reporting Act<sup>2</sup> which requires that certain persons file reports and/or keep records regarding the following types of monetary instruments transactions:

- (1) A transaction in which a domestic financial institution is involved in the payment, receipt, or transfer of United States coins, currency, or other monetary instruments in an amount or denomination (or under circumstances) prescribed by the Secretary of the Treasury, subject to certain exemptions;<sup>3</sup>

- (2) Transactions or relations between a United States resident or citizen, or a person in and doing business in the United States, and a foreign financial agency;<sup>4</sup>
- (3) Foreign currency transactions conducted by a United States person or a foreign person controlled by a United States person;<sup>5</sup>
- (4) The knowing transportation of monetary instruments of more than \$10,000 at one time from a place in the United States to or through a place outside the United States, or to a place in the United States from or through a place outside the United States;<sup>6</sup> and
- (5) The knowing receipt of monetary instruments of more than \$10,000 at one time transported into the United States from or through a place outside the United States.<sup>7</sup>

**Observation:**

The statute governing reports on exporting and importing monetary instruments and the regulations promulgated under it do not apply to a common carrier of passengers when a passenger possesses a monetary instrument or to a common carrier of goods if the shipper does not declare the instrument.<sup>8</sup>

Anyone violating the reporting or recordkeeping requirements under the Currency and Foreign Transactions Reporting Act may be subject to both criminal<sup>9</sup> and civil<sup>10</sup> penalties, including forfeiture.<sup>11</sup>

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Footnotes

- 1 [Ratzlaf v. U.S.](#), 510 U.S. 135, 114 S. Ct. 655, 126 L. Ed. 2d 615 (1994).
- 2 [31 U.S.C.A. §§ 5311 to 5332.](#)  
[31 C.F.R. §§ 128.1 to 128.23](#) deals with the reporting of international capital and foreign-currency transactions and positions; [31 C.F.R. §§ 1010.100 to 1030.540](#) deals with the Financial Crimes Enforcement Network of the Department of Treasury.  
As to the definition of "currency," see [§ 5](#).
- 3 [31 U.S.C.A. § 5313.](#)
- 4 [31 U.S.C.A. § 5314.](#)
- 5 [31 U.S.C.A. § 5315.](#)
- 6 [31 U.S.C.A. § 5316\(a\)\(1\).](#)
- 7 [31 U.S.C.A. § 5316\(a\)\(2\).](#)
- 8 [31 U.S.C.A. § 5316\(c\).](#)
- 9 [31 U.S.C.A. § 5322.](#)
- 10 [31 U.S.C.A. § 5321.](#)
- 11 [31 U.S.C.A. § 5317.](#)

## 53A Am. Jur. 2d Money § 68

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#### V. Criminal Offenses Involving Money

##### B. Records and Reports on Monetary Instruments Transactions

## § 68. Actual knowledge of reporting requirement in forfeiture cases

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### West's Key Number Digest

West's Key Number Digest, Banks and Banking  188, 188.5

West's Key Number Digest, [Currency Regulation](#)  7

There is a division in authority among the federal circuit courts of appeal as to whether a party must have knowledge of the reporting requirements before money is subject to civil forfeiture.<sup>1</sup> The majority view<sup>2</sup> is that actual knowledge is not required for civil forfeiture.<sup>3</sup> The minority view requires actual knowledge of the reporting requirements for civil forfeiture.<sup>4</sup> However, even a court requiring actual knowledge has held that liability for a material misstatement or omission may attach regardless of whether the reporting error was intentional or inadvertent.<sup>5</sup>

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### Footnotes

- 1 [U.S. v. \\$359,500 in U.S. Currency](#), 828 F.2d 930, 90 A.L.R. Fed. 209 (2d Cir. 1987) (referring to the phrase "knowingly transports" as stated in [31 U.S.C.A. § 5316\(a\)](#)); [U.S. v. \\$173,081.04 in U.S. Currency and One Personal Check Drawn by Jaime Buendia in the Amount of \\$21,128.00](#), 835 F.2d 1141 (5th Cir. 1988).
- 2 [U.S. v. \\$359,500 in U.S. Currency](#), 828 F.2d 930, 90 A.L.R. Fed. 209 (2d Cir. 1987).
- 3 [U.S. v. \\$359,500 in U.S. Currency](#), 828 F.2d 930, 90 A.L.R. Fed. 209 (2d Cir. 1987); [U.S. v. Twenty Thousand Seven Hundred Fifty-Seven Dollars and Eighty-Three Cents \(\\$20,757.83\) Canadian Currency](#), 769 F.2d 479 (8th Cir. 1985); [U.S. v. Forty-Seven Thousand Nine Hundred Eighty Dollars \(\\$47,980\) in Canadian Currency](#), 804 F.2d 1085 (9th Cir. 1986).  
The government need not show that claimant had knowledge of currency reporting requirements in order to support civil forfeiture for violation of those requirements. [U.S. v. \\$94,000.00 in U.S. Currency, Along With Any Interest Earned Thereon in First Financial Sav. Ass'n Account No. 79-70063411](#), 2 F.3d 778, 39 Fed. R. Evid. Serv. 490 (7th Cir. 1993).

- 4 U.S. v. \$173,081.04 in U.S. Currency and One Personal Check Drawn by Jaime Buendia in the Amount of \$21,128.00, 835 F.2d 1141 (5th Cir. 1988); U.S. v. One (1) Lot of Twenty-Four Thousand Nine Hundred Dollars (\$24,900.00) in U.S. Currency, 770 F.2d 1530 (11th Cir. 1985) (civil forfeiture action for failure to report exportation of currency in excess statutory limit).
- 5 U.S. v. \$173,081.04 in U.S. Currency and One Personal Check Drawn by Jaime Buendia in the Amount of \$21,128.00, 835 F.2d 1141 (5th Cir. 1988).

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### VI. Foreign Money; Exchange

#### A. In General


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